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ABSTRACT

A collection of resources for high school history and government teachers and their students, this volume treats core ideas on constitutional government in the United States. James Madison's ideas as found in "The Federalist Papers" are examined in conjunction with their counterpoints in essays of the Anti-Federalists. This volume contains three main sections. Part 1 includes three papers that provide background information and ideas for teachers, "The Federalist Papers in the Curriculum" (John J. Patrick); "James Madison and the Founding of the Republic" (A. E. Dick Howard); and "The Constitutional Thought of the Anti-Federalists" (Murray Dry). Part 2 of the volume includes six lesson sets for high school students of U.S. history or government. Each lesson set consists of a teaching plan and accompanying lessons for students. Part 3 contains 13 primary documents: 7 papers by Madison in "The Federalist" and 6 papers by leading Anti-Federalists. A selected annotated bibliography (Earl P. Bell) provides teachers and students with additional information on Madison and "The Federalist Papers." (DB)

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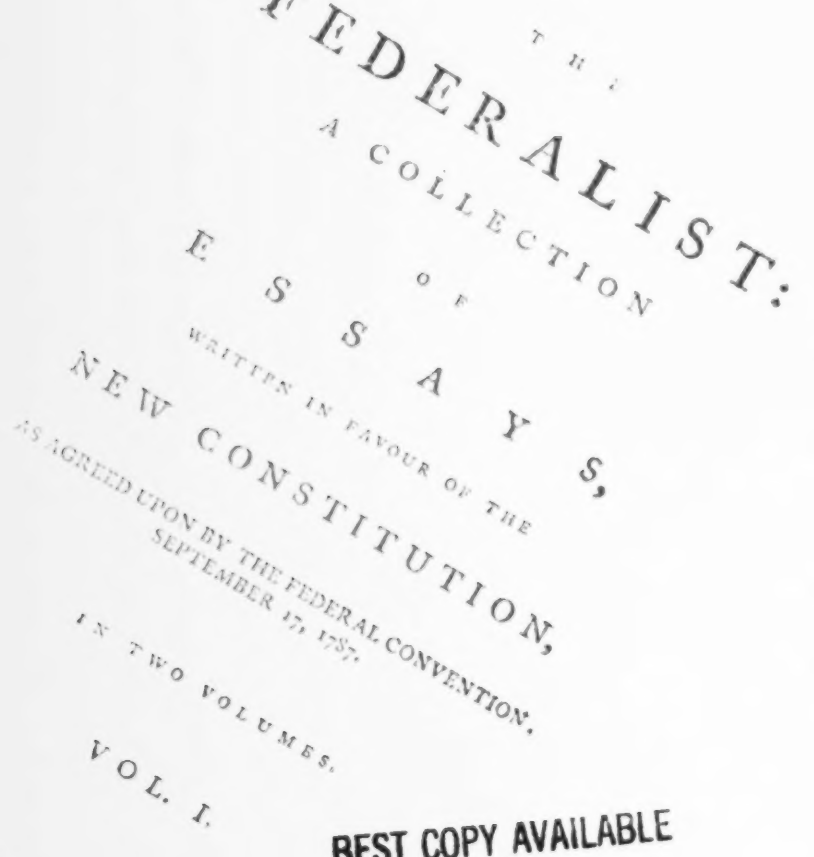
James Madison
AND THE
Federalist Papers

JOHN J. PATRICK


THE
FEDERALIST:
A COLLECTION
OF
ESSAYS,
WRITTEN IN FAVOUR OF THE
NEW CONSTITUTION,
AS AGREED UPON BY THE FEDERAL CONVENTION,
SEPTEMBER 17, 1787.
IN TWO VOLUMES.
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National Trust for Historic Preservation
WITH
ERIC Clearinghouse for Social Studies/Social Science Education
National Center for America's Founding Documents

James Madison and *The Federalist Papers*

John J. Patrick

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About the Authors

John J. Patrick, the principal author and editor of this work, is director of the Social Studies Development Center at Indiana University, where he is also a professor of education and director of the ERIC Clearinghouse for Social Studies/Social Science Education. John Patrick is the author of the *Introduction* to this work, *Background Paper* 1, *"The Federalist Papers* in the Curriculum," and *Lessons* 1-10 and 12.

Earl P. Bell is chairperson, department of history, the University of Chicago Laboratory Schools. He is the author of *Lesson* 11 and the *Select Annotated Bibliography*.

Murray Dry is a professor of political science at Middlebury College. He is the author of *Background Paper* 3, "The Constitutional Thought of the Anti-Federalists."

A.E. Dick Howard is the White Burkett Miller Professor of law and public affairs, the University of Virginia. He is the author of *Background Paper* 2, "James Madison and the Founding of the Republic."

National Trust for Historic Preservation

The National Trust for Historic Preservation is a private, nonprofit membership organization with more than 220,000 individual and 3,000 organizational members. The National Trust was chartered by the U.S. Congress in 1949 to encourage the public to participate in the preservation of America's history and culture and to own historic properties.

The National Trust provides technical advice and financial assistance to nonprofit organizations and public agencies to help them carry out preservation activities. It advocates the country's heritage in the courts and with legislative and regulatory agencies; and it operates special projects to show how a preservation approach can be a central organizing principle in community revitalization and development.

Montpelier, the home of James Madison, is one of seventeen historic properties operated by the National Trust. It extends to 2,700 acres in the Piedmont of Virginia. After eighty years in the ownership of the Madisons, and a further sixty years when it passed through the hands of six separate owners, it was purchased in 1901 by William du Pont. The du Pont family lived there for another eighty years, making many changes to the mansion and the landscape; and in 1984, the estate was willed to the National Trust by Marion du Pont Scott.

The property is currently being assessed for the creation of a master plan for the future. The planning process has been greatly aided by a substantial grant from the Congress through the Commission on the Bicentennial of the United States Constitution. These funds were matched by the General Assembly of Virginia. The combined funds will allow large-scale repairs to both the structure and infrastructure of the estate to be completed. Through gifts and grants, the du Pont family continues to support the preservation and restoration of the property.

The National Trust promotes education of the public about the heritage of the United States, including the education of teachers and elementary and secondary school students. The Master Class Program at Montpelier is one of several educational programs sponsored or conducted by staff of the National Trust for Historic Preservation.

The National Trust for Historic Preservation is located at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036; (202) 673-4000.

Acknowledgments

This publication was developed with the assistance of participants in the first Master Class for Teachers Program at Montpelier. The participants helped in the conceptualization, planning, and evaluation of this work. They are listed in the *Introduction* to this volume. Five of the participants were members of a curriculum planning team in preparation of this volume: Earl Bell, Louis Grigar, Carol Oliver, Richard Schubart, and Theodore Sharp.

Kathleen Hunter deserves special recognition. She is director of Federal Programs and Education Initiatives at the National Trust for Historic Preservation. Ms. Hunter provided outstanding leadership in planning and obtaining funding for the Master Class for Teachers Program, and she served ably as director of this program. She also provided valuable suggestions about the contents and design of this volume.

Dory Twitchell and Melanie Biermann also deserve recognition for their leadership and services during the summer of 1989. Ms. Twitchell served as assistant director of Montpelier and was always there to help participants in the Master Class for Teachers Program. Ms. Biermann served as coordinator of education programs at Montpelier; she provided useful ideas about the development of this volume.

Constance Burr, Promotion Editor for the National Trust for Historic Preservation, made very valuable contributions to the editing and design of this volume. She was an indispensable partner in production of this volume.

Editorial assistance was provided by the following persons: Nita Levison, Vickie Schlene, and Dorothy Taylor of the Social Studies Development Center and ERIC Clearinghouse for Social Studies/ Social Science Education; Wendy Ripley of the National Trust for Historic Preservation; and John Drisko of the National Center for America's Founding Documents.

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James Madison

THE

FEDERALIST:

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Title page of the first edition of *THE FEDERALIST*, 1788.

Introduction

This volume, JAMES MADISON AND *THE FEDERALIST PAPERS*, is a collection of resources for high school history and government teachers and their students. It is the product of the Master Class for Teachers Program, conducted by the National Trust for Historic Preservation in association with the Social Studies Development Center of Indiana University.

In the summer of 1989, from June 21 to June 30, a select group of high school history and government teachers lived and worked for ten days at Montpelier, the historic home of our fourth president, James Madison, and one of seventeen historic properties operated by the National Trust. This property, near the town of Orange, extends to 2,700 acres in the Piedmont of Virginia.

Each morning, the members of this Master Class for Teachers Program assembled in one wing of Madison's house to participate in a seminar on his enduring ideas on constitutional government. The daily discussions on Madison's essays in *The Federalist* were led by two members of the faculty at Saint John's College, Annapolis, Maryland: Eva T.H. Brann and Thomas J. Slakey.

Each evening, a well-known scholar addressed the group on the political thought of James Madison. After dinner in Madison's dining room, the group convened on his back porch and adjoining patio to question the lecturer and discuss great political ideas and issues with him or her. The list of guest lecturers included James MacGregor Burns, Gordon Wood, Garry Wills, Lance Banning, Herman Belz, Murray Dry, Fay Metcalf, John J. Patrick, and A.E. Dick Howard.

During the afternoons, participants in this Master Class for Teachers Program read assigned papers in *The Federalist* and other books and papers about and by James Madison. They also met with guest speakers and discussion leaders who treated topics in social history associated with the life of James Madison and his home, Montpelier. In these settings, they discussed such topics as slavery in Virginia, the material culture and built environment of Montpelier and Virginia, and the arts in the era of Madison. (A complete list of guest lecturers and their topics is included at the end of this *Introduction*.)

The participants also focused on curriculum applications of their experience at Montpelier. They participated in a curriculum seminar and contributed to the design and substance of this volume, JAMES MADISON AND *THE FEDERALIST PAPERS*, which includes teaching and learning materials for high school courses in American history and government. Five participants were members of a curriculum team that met with the principal author of this volume to help him conceptualize and plan it. All of the participants served as evaluators of drafts of the teaching and learning materials in this volume, and they advised the author about how to revise them for publication. (A list of the participants, including curriculum team members, is included at the end of this *Introduction*.)

Purposes and Subjects

There is a tight connection between the substance of the Master Class for Teachers Program at Montpelier and the main ideas in this volume's learning materials for high school students. Topics addressed by the guest lecturers, for example, constitute main themes in the *Teaching Plans* and *Lessons*: majority rule and minority rights, federalism and republicanism, separation of powers in a limited government, and national security and personal liberty.

This volume, JAMES MADISON AND *THE FEDERALIST PAPERS*, treats core ideas on constitutional government in the United States, as did the Master Class for Teachers Program. These core civic ideas are found in that classic of American political thought, *The Federalist* by Alexander Hamilton, James Madison, and John Jay. In this volume of materials for high school teachers and students, seven of Madison's papers in *The Federalist* are selected as the focal points for *Teaching Plans* and *Lessons*: numbers 10, 14, 39, 41, 47, 48, 51.

Anti-Federalist ideas are also presented, because without them *The Federalist Papers* can neither be fully understood nor appreciated. Herbert Storing, the late expert on political ideas of the founding period, stressed the importance of both sides in the great debate of 1787-88: "If . . . the foundation of the American polity was laid by the Federalists, the Anti-Federalist reservations echo through American

history; and it is in the dialogue, not merely in the Federalist victory, that the country's principles are to be discovered."[1]

This volume is designed to link Madison's ideas in *The Federalist* to their counterpoints in essays of the Anti-Federalists. So the perennial questions and issues of constitutional government are addressed here from the alternative perspectives of the antagonists in the great debate about the Constitution of 1787. An assumption of this work is that the civic ideas and issues of the founding period are still interesting and useful to citizens of the United States.

Overarching goals of the *Teaching Plans* and *Lessons* in this volume are to help students to

- know the origins and purposes of *The Federalist* and the role of James Madison in producing it;
- acquire knowledge of central ideas and issues on constitutional government in selected papers by Madison in *The Federalist* and in selected essays of the Anti-Federalists;
- analyze and appraise different positions on constitutional issues of Madison in papers of *The Federalist* and of various Anti-Federalists;
- use evidence in primary documents to support or refute arguments about constitutional issues;
- select and defend positions in response to constitutional issues raised by Madison's papers in *The Federalist* and by papers of various Anti-Federalists;
- connect principles and issues of constitutional government during the founding period with civic values in the United States today;
- develop reasons for commitment to core values of constitutional government in the United States, which are rooted in the founding period.

The preceding goals conform to curriculum guides and the contents of secondary school courses in American history and government. They are also consistent with the long-standing overarching purpose of the social studies in American schools—education for citizenship in a free society.

Contents

This volume has three major parts: *Part One, Background Papers; Part Two, Lessons;* and *Part Three, Documents.*

Part One includes three papers that provide background information and ideas for teachers. Teachers are advised to read these three papers in preparation for teaching one or more of the *Lessons* in this volume.

The first paper in *Part One*, "*The Federalist Papers* in the Curriculum" by John J. Patrick, examines the status of this American classic in high school history and government courses. A rationale is provided for teaching *The Federalist Papers*, and effective teaching strategies are discussed. The second paper, "James Madison and the Founding of the Republic" by A.E. Dick Howard, provides important information about the life of James Madison and his great contributions to the establishment of constitutional government in the United States. The third paper, "The Constitutional Thought of the Anti-Federalists" by Murray Dry, discusses main ideas of the political foes of James Madison in the debate on the Constitution of 1787.

Part Two includes six *Lesson Sets* for high school students of American history or government. Each *Lesson Set* consists of a pair of *Teaching Plans* and accompanying *Lessons* for students. The *Lessons* treat the following central topics and ideas on constitutional government in the United States: origin and purposes of *The Federalist Papers*, differences between Federalists and Anti-Federalists, majority rule and minority rights, federalism and republicanism, separation of powers and checks and balances, limited government and personal freedom, national security and personal liberty, the Bill of Rights, and free government. The political thought of James Madison is emphasized throughout the lessons. **Teachers have permission to duplicate these lessons and to distribute copies to students in their classes.**

Part Three consists of thirteen primary documents. There are seven papers by Madison in *The Federalist*: numbers 10, 14, 39, 41, 47, 48, and 51. There are six papers by leading Anti-Federalists: two by Brutus, one by the Federal Farmer, one by Agrippa, one by Centinel, and one by "the Pennsylvania Minority." Excerpts from these primary documents are included in the *Lessons* for students. The complete texts of these documents in this volume provide readily available sources for teachers and students. Teachers may want to refer to these documents to see how each excerpt in the *Lessons* fits into the complete text of the document from which it was taken. Teachers are advised to read the full text of each document before teaching a *Lesson* in this volume that includes excerpts from the document. Furthermore, some teachers may want to assign the complete texts of the documents to their best students. If so, they can easily make copies of the documents in *Part Three* for distribution to their students.

There is a *Select Annotated Bibliography* at the end of this volume. This listing directs teachers to additional sources of information about James Madi-

son, *The Federalist Papers*, and the writings of the Anti-Federalists.

Distinctive Characteristics of Materials in this Volume

The following statements describe distinctive characteristics of the *Teaching Plans* and *Lessons* for students in this volume. These statements may assist teachers in appraising these materials and in using them with their students.

1. These *Teaching Plans* and *Lessons* fit standard secondary school courses in American history and government. They treat central ideas on constitutional government in the United States, which are embedded in the curriculum guides and textbooks for secondary school courses in American history and government. Examples of these ideas are majority rule and minority rights, federalism, republicanism, separation of powers, checks and balances, national security, personal liberty, limited government, and the rule of law.

2. These *Teaching Plans* and *Lessons* extend and enrich standard textbook treatments of topics on constitutional government; they do not duplicate textbook treatments. Each *Teaching Plan* and *Lesson* enables teachers to provide detailed treatments of topics and ideas that are merely mentioned or discussed briefly in textbooks.

3. Each *Teaching Plan* and *Lesson* has clear statements of objectives and subject matter that pertains to these objectives. Learning activities are included that require students to use the contents of each *Lesson* to answer questions and complete exercises that fit the objectives of the *Lesson*.

4. These *Teaching Plans* and *Lessons* encourage application of knowledge in the performance of various kinds of lower- and higher-level cognitive tasks, from recall and comprehension to interpretation, analysis, synthesis, and evaluation. Students are challenged to identify and comprehend main ideas, to clarify and analyze alternative positions on issues, and to take a stand in favor of or in opposition to positions on constitutional issues.

5. These materials emphasize the use of primary documents as sources of evidence for classroom discussions, debates, and writing activities. Students are required to find and use information in primary sources to support or reject alternative viewpoints on constitutional issues.

6. These *Teaching Plans* and *Lessons* conform to the overarching goals of this volume, which are listed in this *Introduction*. In line with these goals, the materials emphasize central concepts and values of American constitutional government, which are discussed in papers of *The Federalist* and of the Anti-Federalists. Furthermore, these materials highlight enduring issues of American constitutional government and require students to use primary documents in their analyses and appraisals of these issues.

How to Select and Use these Materials

These twelve *Teaching Plans* and accompanying *Lessons* for students are more than most teachers can use in a single course, given the need to cover many other topics in a limited period of time. The lessons, therefore, should be viewed as a pool of teaching resources, which different teachers will draw upon in different ways. Many teachers may select only two or three of these twelve *Lessons* to supplement a single part of their textbook. Other teachers may decide to use several of the *Teaching Plans* and *Lessons* to provide in-depth treatments about the alternative views of Federalists and Anti-Federalists. Still other teachers may use these materials only for reference or for selection of interesting examples to incorporate in their own originally designed instructional units.

Teachers are encouraged to use these materials variously to suit their own objectives. Various choices about how to use these *Teaching Plans* and *Lessons* are possible, because each *Lesson Set* of materials can be used singly, without reference to other materials in this volume. The different *Lesson Sets* can also be taught in combination, because the ideas in each *Lesson* can be readily connected to every other *Lesson* in this volume.

All materials needed to teach a *Lesson* are provided in this volume. However, teachers are encouraged to expand or improve upon these materials by exposing students to related learning materials. Teachers are also encouraged to adapt these *Teaching Plans* and *Lessons* to fit their styles of teaching, their perceptions of student needs, or their classroom circumstances. *Teaching Plans* are presented as general suggestions, not as prescriptions.

Little time is needed to prepare to use a *Lesson*. Follow these steps:

- Read the materials for students and the *Teaching Plan*, and read the relevant primary documents in *Part Three* of this volume.
- Make and distribute copies of the learning materials for students.

- Follow or modify teaching suggestions for opening, developing, and concluding the *Lesson*, which are presented in the *Teaching Plan*. It is likely that many teachers will modify the *Teaching Plan* and adjust their use of the accompanying *Lesson* for students to make the materials more useful in particular situations.

These twelve *Teaching Plans* and accompanying *Lessons* for students are a mere sampler of the rich contents in *The Federalist Papers* and the essays of the Anti-Federalists. These *Teaching Plans* and *Lessons* are not meant to be a comprehensive treatment of ideas in *The Federalist* and essays of the Anti-Federalists. Rather, they provide students with brief introductions to classic American writings on constitutional government that may stimulate them to think about important political ideas and to read more about these ideas.

The political thought of James Madison is highlighted because of the connection of this project to his historic home, Montpelier. There is additional justification, however, for this emphasis. No other American contributed more than Madison did to the establishment of a workable constitutional government for the United States, not even Washington, Hamilton, or Jefferson. In recognition of Madison's qualities and achievements, the great Thomas Jefferson simply labelled him "the greatest man in the world" (letter to Benjamin Rush in 1790).[2] About two hundred years later, Madison's biographer, Robert Rutland, concluded: "By the criteria of his own time, James Madison was our last great republican. By the criteria of our own, Madison was *the* Founding Father."[3]

These *Teaching Plans* and *Lessons* reflect the greatness of the political thought of James Madison, as did the activities of the Master Class for Teachers Program at Montpelier. However, neither the Master Class for Teachers Program nor these *Teaching Plans* and *Lessons* were designed to encourage thoughtless acceptance of any point of view. Rather, the purpose was and is to spark reflection, deliberation, discourse, criticism, and interest in continuing inquiry about fundamentals of the American civic legacy, which can be found in the papers of Madison in *The Federalist*, and in the papers of his Anti-Federalist foes in the great debate of 1787-1788.

Notes

1. Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: The University of Chicago Press, 1981), 72.

2. George W. Corner, ed., *The Autobiography of Benjamin Rush* (Princeton, NJ: Princeton University Press, 1948), 181.

3. Robert A. Rutland, *James Madison: The Founding Father* (New York: Macmillan Publishing Company, 1987), 253.

Lists of Guest Lecturers and Participants

The guest lecturers and participants in the Master Class for Teachers Program are listed below. Members of the curriculum planning team are indicated by an asterisk (*).

Guest Lecturers

Lance Banning
Professor of History
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Topic: "Separation of Powers and Limited Government"

Herman Belz
Professor of History
University of Maryland
Topic: "National Security and Personal Freedom"

James MacGregor Burns
Senior Fellow
Center for Humanities and Social Sciences
Williams College
Topic: "The Context of *The Federalist Papers*"

Murray Dry
Professor of Political Science
Middlebury College
Topic: "Constitutional Thought of the Anti-Federalists"

Rex Ellis
Director of Afro-American Interpretation and Presentation
Colonial Williamsburg Foundation
Topic: "Slavery, Virginia, and the Constitution"

John Douglas Hall
Musicologist and Associate
Gatsby's Tavern Museum
Alexandria, Virginia
Topic: "The Performing Arts in Madison's Time"

A.E. Dick Howard
White Burkett Miller Professor of Law and Public Affairs
University of Virginia
Topic: "The Legacy of Madison and *The Federalist Papers*"

Conover Hunt
Guest Curator for "James Madison and the Search for Nationhood" at the Library of Congress
Topic: "Arts and Culture of Virginia in Madison's Time"

Fay D. Metcalf
Executive Director
National Commission on Social Studies in the Schools
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Topic: "Using Material Culture as a Classroom Resource"

Ann Miller
Executive Director
Orange County Historical Society
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Topic: "Living in Virginia's Piedmont in Madison's Time"

John J. Patrick*
Director
Social Studies Development Center
Professor of Education
Indiana University
Topic: "*The Federalist Papers* in the Curriculum"

Rueben Rainey
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University of Virginia
Topic: "The Virginia Landscape in Madison's Time"

Garry Wills
Henry R. Luce Professor of American Culture and Public Policy
Northwestern University
Topic: "Majority Rule and Minority Rights"

Gordon Wood
Professor of History
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Topic: "Federalism in an Extended Republic"

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Huntsville, Alabama

Eva J. Brown
Social Studies Teacher
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Escondido, California

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Phillips-Exeter Academy
Exeter, New Hampshire

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Superintendent
Falmouth Public Schools
Falmouth, Maine

NOTE: All descriptions of Guest Lecturers and Participants are based on the status of these individuals at the time of their involvement in the Master Class for Teachers Program.

Part One: Background Papers

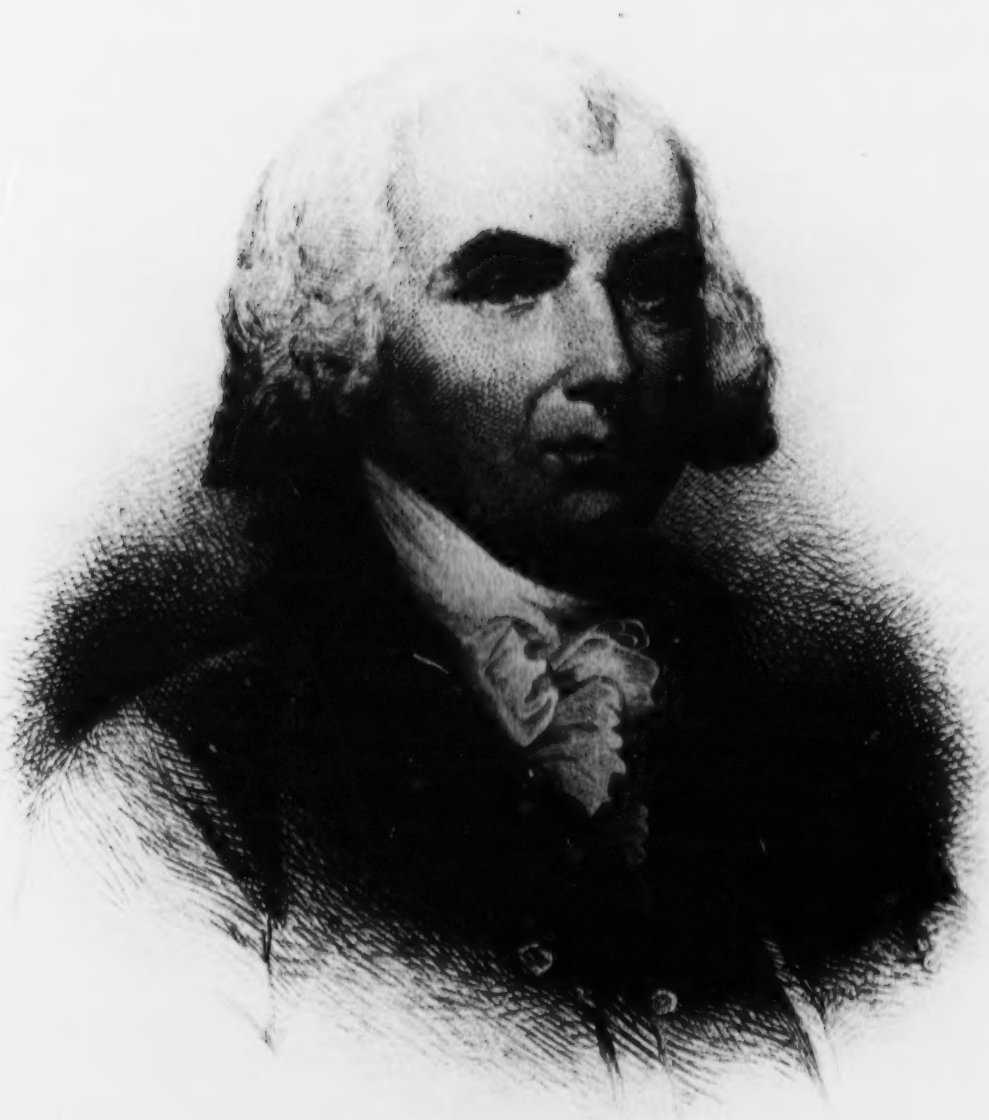
Part One consists of three background papers for users of this volume:

1. "*The Federalist Papers* in the Curriculum" by John J. Patrick.
2. "James Madison and the Founding of the Republic" by A.E. Dick Howard.
3. "The Constitutional Thought of the Anti-Federalists" by Murray Dry.

Background Paper 1 discusses the treatment of *The Federalist* in high school history and government courses. The author provides a rationale and strategies for teaching *The Federalist Papers* to high school students.

Background Paper 2 presents a biographical sketch of James Madison with emphasis upon his role in the Federal Convention of 1787, ratification debate of 1787-88, and framing of the Bill of Rights in 1789. The author discusses central ideas of Madison on constitutional government.

Background Paper 3 examines core ideas of the Anti-Federalists on constitutional government. The author emphasizes Anti-Federalist positions on republicanism, federalism, separation of powers, and a bill of rights.



James Madison, fourth President of the United States of America, and co-author of *The Federalist*.

Source: Library of Congress

Background Paper 1

The Federalist Papers in the Curriculum

John J. Patrick

The Federalist is an American classic! Consider the accolades that leading statesmen and scholars have given this collection of 85 papers by Publius on the merits of the Constitution of 1787.[1]

Shortly after publication of *The Federalist*, Thomas Jefferson, proclaimed it "the best commentary on the principles of government which ever was written."[2]

Later on, Jefferson's political foe, Chief Justice John Marshall wrote: "It [*The Federalist*] is a complete commentary on our Constitution, and it is appealed to by all parties in the questions to which that instrument gave birth."[3]

George Washington predicted that *The Federalist* would transcend the time and circumstances of its publication to become a generally admired treatise on free government: "When the transient circumstances and fugitive performances which attended this Crisis shall have disappeared," said Washington, "that Work will merit the Notice of Posterity; because in it are candidly and ably discussed the principles of freedom and the topics of government, which will be always interesting to mankind so long as they shall be connected in Civil Society."[4]

Washington's prophecy has come true. From the founding period to modern times, lawyers, judges, politicians, and scholars have used ideas in *The Federalist* to guide their inquiries, deliberations, and decisions about principles and issues of constitutional government. Charles Beard, for example, praised these papers of Publius as "the most instructive work on political science ever written in the United States" and reported that he reread parts or all of *The Federalist* every year for fifty years. At each reading, Beard was newly informed, he said, "by the discovery of ideas and suggestions which [he] had previously overlooked or had failed to grasp in their full meaning."[5] (Beard's critics probably would respond with regret that he did not read some of the papers at least one more time, especially No. 10, to remedy his misunderstanding of them.)[6]

Clinton Rossiter commented in his introduction to a recent edition of *The Federalist* "that it stands third only to the Declaration of Independence and the Constitution itself among all the sacred writings of American political history."[7] And during our bicentennial celebration of the U.S. Constitution, the venerable historian, Richard Morris, concluded that *The Federalist* "has remained profound, searching, challenging, and . . . everlastingly controversial."[8]

This strong praise for *The Federalist*, across two centuries of American history, might lead one to expect a secure and prominent place for it in the curricula and classrooms of our schools, as a staple of courses in history and government and as an anchor for citizenship education. But this is not so! A significant gap separates the educational realities from the elegant rhetoric about timeless truths in *The Federalist*.

Status of *The Federalist* in Schools

Curriculum developers and textbook publishers seem to value *The Federalist* much less than the political and academic luminaries who have so lavishly lauded it. This classic work is mentioned only briefly, if at all, in widely used high school textbooks on American history, government, and civics.

The best-selling high school government textbook, *Magruder's American Government*, is also the leader in coverage of *The Federalist*, which makes the preceding point about the paucity of coverage of this document. Only five pages of this textbook include mention of *The Federalist*, with little or no discussion of the ideas in it; and one page has a quotation from No. 47 about separation of powers as a means to limited government. In addition, the Appendix to this book includes the complete text of Madison's paper No. 10. However, the document is presented without context or explanation; there is only a one-sentence introduction, which is cryptic and somewhat misleading about the contents of the essay.[9]

Other widely used textbooks mention *The Federalist* in one or two paragraphs in a section of the standard chapter on the framing and ratifying of the Constitution.[10] This lack of coverage in current text-

books is consistent with practices in the recent past. A 1959 study of high school textbooks revealed that only three civics textbooks even mentioned *The Federalist*. In addition, "of seventeen history and government textbooks, twelve made only minimal reference to the essays."[11]

Of course, abysmal ignorance is the inevitable consequence of this kind of neglect. The 1987 national assessment in history revealed that only 40% of 17-year-olds knew that *The Federalist* was written to support ratification of the Constitution. Furthermore, this national sample of high school students achieved a dismal average score of 54.4% on a 19-item test about principles and issues of constitutional government in the United States.[12]

Why is *The Federalist* treated so shabbily in our high school textbooks and curricula? Three reasons are offered to stimulate thought about this problem.

First, civic educators are committed to helping students know and deal with political reality. But suppose they believe that the central ideas of *The Federalist* are archaic and no longer applicable to the modern political world. If these papers appear to contribute little to the student's understanding of the current political system, then teachers will give little more than a passing historical reference to them.

Second, educators may feel obligated to attend to the goals and subjects in the school's curriculum guide. But suppose they find little connection between the contents of *The Federalist* and the secondary school curriculum. Well, if *The Federalist* does not seem to fit established curriculum patterns, then it will not be taught.

Third, educators try to offer a curriculum that fits the general level of ability of their students. But suppose they think that ideas in *The Federalist* are too challenging for most, if not all, members of their high school classes. If this subject is judged as too difficult for learners, then it will be avoided by teachers.

Critics and skeptics have claimed that *The Federalist* is too old, too arcane, and too difficult to meet the interests and needs of modern students. Is it? Can these objections to *The Federalist* in the curriculum be met and turned aside? Or is there really little or no justification for this venerated treatise in the curriculum of today's secondary schools?

My answer is that a credible case can be made for teaching ideas and issues of *The Federalist* to students of high school courses in government and history. What are the essential elements of this case?

Why Teach *The Federalist*

There are three reasons for including ideas and issues of *The Federalist* papers in the high school curriculum:

1. They are *keys to knowledge* of constitutional government and citizenship in the United States.
2. They *reflect core values* in the civic culture.
3. They are *connected to the curriculum* in history, government, and civics.

These three reasons are interrelated, and therefore, they are discussed concurrently in the case for *The Federalist* in the curriculum, which follows.

A perennial goal of education in a free society is development of knowledge on government and citizenship. In a democratic republic, the preferred form of government in *The Federalist*, this goal has critical importance; because without enlightened citizenship, a government of the people cannot endure. And enlightened citizenship can only be the product of enlightening scholarship in a system of education accessible to the general public. Madison promulgated this point, as evidenced by his remarks in a letter to William T. Barry, the Lieutenant governor of Kentucky:

> The liberal appropriations made by the Legislature of Kentucky for a general system of Education cannot be too much applauded. A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.[13]

Does *The Federalist*, in Madison's terms, provide to "people who mean to be their own governors . . . the power which knowledge gives?" Yes! Publius profoundly examines the inescapable problems and issues of free government, which our students, as citizens, must understand to exercise fully their responsibilities and rights under the Constitution.

Consider the basic paradox of constitutional democracy in modern times: how to have majority rule with protection of the rights of individuals, all individuals, including those who are members of unpopular minority groups. We accept and teach this conception of democracy to our students. We readily recognize that both majority rule and minority rights are values at the core of our civic culture and our high school curriculum. Taken to its extreme, however, majority rule would destroy the rights and liberty of individuals in the minority, as Madison

sagely warned in *The Federalist* 10 and 51. Conversely, unlimited rights and freedoms for individuals or minority groups would preclude majority rule, and civil society too.[14]

Majority rule and minority rights—these contrapuntal values that define a constitutional democracy—are inevitably in conflict. But if free government is to endure, then the rival claims of majorities and minorities must somehow be limited and accommodated. In several numbers of *The Federalist*, Madison frames the problem and tells us how to deal with it—knowledge our students need in preparation for responsible citizenship in our constitutional democracy.

Majority rule with minority rights, however, is only one of several perennial predicaments of our constitutional democracy treated in *The Federalist*. Consider the overriding importance and enduring relevance of three other examples.

Public order with private rights—this paradox poses the problem of finding a workable balance between power and liberty in a government that is both strong and limited, with enough power to act effectively for the common good and sufficient limits to guard the liberty of individuals from abuses of public power. Ideas on public order and private rights permeate *The Federalist*. However, numbers 10, 23, 37, 44, and 47-51 provide especially useful commentaries for teachers and students on how to construct a limited government that is also sufficiently powerful.

National sovereignty with states' rights—this problem is the challenge of finding a workable division of authority and duties in a large federal republic that includes a sovereign and energetic national government and several state-level republics that also exercise significant powers. Ideas on federalism, republicanism, and states' rights are treated throughout *The Federalist*; but teachers and students should concentrate on numbers 9, 10, 14, and 39.

National security with personal liberty—this problem involves simultaneous provision of common defense for the society and protection of liberty for persons threatened by overbearing defenders of the commonweal. The best papers in *The Federalist* on this subject are numbers 23, 24, and 41, especially No. 41.

Each of these unavoidable and paradoxical problems of our constitutional democracy challenges us—as teachers, students, and citizens—to conjoin opposing values to create a workable synthesis. Each problem requires a search for acceptable limits on contending forces. Under what conditions, and at what point, should the law limit the majority to protect the rights of individuals in the minority? And conversely, when and why should minority rights be limited by law to preserve the will of the majority? Responses to these generic questions will vary with issues and their circumstances. But the civic values and principles in the problems, such as majority rule and minority rights—these are the constant characteristics of a constitutional democracy. If either one of the opposing civic values is sacrificed to the other, then the constitutional democracy is lost. Our students need to learn this, and we can use *The Federalist* to help them do it.

By turning to *The Federalist*, teachers and students can find insightful and provocative responses to the paradoxical problems of constitutional democracy: majority rule with minority rights, public order with private rights, national sovereignty with states' rights, and national security with personal liberty. Teachers and students, for example, can examine Madison's model for a "well-constructed Union" that he hoped would effectively conjoin liberty and order, majority rule with minority rights, and national and state governments in a federal system.[15] These responses are not correct in every detail. For example, Publius' prediction in No. 78 about the federal judiciary's weak position relative to the other branches of government does not fit our current constitutional system. Furthermore, many ideas in *The Federalist* are debatable today, as they were during the founding period. However, these ideas remain valuable, because they are indisputably applicable to the ongoing concerns of citizenship in our democratic republic.

Examination of perennial constitutional problems posed in *The Federalist*, and the historical and current issues associated with them, requires knowledge of first principles of constitutional government in the United States, such as popular sovereignty, federalism, republicanism, separation of powers, checks and balances, limited government, rule of law, personal liberty, private rights, common good, and so forth. These ideas of *The Federalist* are familiar to civic educators, because they are emphasized in statements of educational goals and in syllabi for courses in history and government. They are embedded in the curricula of our schools.

At this point, the case for teaching *The Federalist* to high school students has been made. In summary, the contents can assist students to comprehend and analyze our contemporary constitutional government. Central ideas of the document are compatible with the civic culture of the United States and standard high school courses in United States history and government. There is no need to create special

courses or units of study on *The Federalist*, unless one has a special desire or need to do so, because the contents of these papers are congruent with the core curriculum of schools, the common learning experiences required of all students as part of their general education for citizenship.

But critical questions remain. Can the contents of this classic work be taught successfully to high school students? My answer: certainly ideas in this work can be learned by a significant number of students, if not by all of them. Responsible educators should not deprive anyone of knowledge and skills merely because they cannot be mastered by everyone.

Will it be a formidable challenge to teach *The Federalist* to willing and able high school students? Of course, the materials are difficult, and teaching and learning them will require sustained effort and intelligence. But these obstacles to civic enlightenment are not insurmountable. They certainly can be overcome by creative and resourceful teachers with commitment to maintaining the civic tradition of *The Federalist*.

Strategies for Teaching *The Federalist*

What strategies might be used to teach ideas in *The Federalist* to high school students willing and able to learn them? Consider these three generic strategies: (1) document-based teaching and learning, (2) issues-based teaching and learning, and (3) course-wide infusion of content. These three categories are not presented as definitive; they do not exhaust the pedagogical possibilities. But they are likely to be useful guides to the teaching and learning of ideas in *The Federalist*; and they may stimulate additional thoughts about how to present these valuable but difficult materials to high school students.

Document-based Teaching and Learning. Most high school students will need careful guidance in their initial confrontations with original text in *The Federalist*. It is not advisable to require them, at first, to read the complete texts of selected papers. Rather, these essays should be abbreviated, annotated, and otherwise edited to aid the comprehension and interpretation of main ideas by high school students. Furthermore, each excerpt from a *Federalist* paper should be introduced with a carefully worded statement about the main ideas covered in the document. Finally, questions should be posed at the end of the document that require students to identify main ideas in it and demonstrate that they comprehend them.

Selected papers from *The Federalist* should be examined in context in order to maximize the student's understanding of them and to minimize specious interpretations. Knowledge of the founding period is a prerequisite to one's study of any portion of *The Federalist*.

James Madison apparently agreed with this point. He wrote about the necessity of interpreting documents in their historical context. He insisted that a literal rendering of the text, without adequate knowledge of the context in which it was written and used, inevitably would be inaccurate. The truth-seeking reader, according to Madison, must always go beyond the document to the time and place of its origin to accurately interpret and assess it. Consider his words on this subject: "If the meaning of the text be sought in the changeable meaning of the words composing it, it is evident that the shape and attributes of the Government [the object of discussion in the text] must partake of the changes to which the words and phrases of all living languages are constantly subject. What a metamorphosis [in meaning] would be produced."[18]

So, a cardinal rule in using primary documents in *The Federalist*, or any other source, is never to work with them as discrete reading assignments, apart from some meaningful context. One type of context, already noted, is the period in which the document originated. Another kind of context, one that might be used in a high school government or civics course, is a conceptual framework that subsumes main ideas of the document. For example, a detailed treatment of the interrelated concepts of separation of powers and checks and balances in government could provide an appropriate context for the study of paper No. 47 of *The Federalist*. However, do not disregard the level of historical knowledge that students bring to the investigation of the document, because this type of conceptual context cannot be adequate to their needs unless they have some minimal level of knowledge about the time of origin of the document.

Given standard constraints of time, and the need to study other materials, only a few papers in *The Federalist* can be included in the curriculum. At a minimum, I would advise use of numbers 1, 10, and 51. Number 1 is valuable because it introduces the work; and numbers 10 and 51 embody Madison's most important statements about how to structure a popular government that can both protect private rights and provide public order and security. Additional papers recommended for the high school curriculum, if time permits, are numbers 14, 15, 23, 39, 41, 47, 48, 70, and 78. These papers are chosen because they treat principles and concepts of gov-

ernment embedded in standard high school courses of study.

Teachers might decide that some of their students are able to work with the complete and unedited versions of these papers. This is always best, if students can do it. If not, look for high-quality learning materials on these documents, which have been prepared for high school students; or create your own materials, tailored to the special needs of your students.

Issues-based Teaching and Learning. Selected papers of *The Federalist* are not only useful sources about principles of constitutional government in the United States, but they also serve to illuminate the perennial issues, the classic controversies of our political system, such as how to conjoin majority rule with minority rights. These basic issues can be the objects of lively classroom activities: roundtable discussions, forums, and debates that involve deliberation, discourse, and decisions on alternative positions of the Federalists and their Anti-Federalist foes about ratification of the Constitution of 1787.

Issues-based teaching of *The Federalist* requires examination by students of select papers of the Anti-Federalists. For example, Madison's position on federalism and republicanism, in numbers 10, 14, and 39 of *The Federalist*, can be countered with select Anti-Federalist writings on the same concepts: Letter IV of Agrippa, Letters I and XVII of the Federal Farmer, and Essay I of Brutus. Students might be asked to assess the contending positions during a roundtable discussion and then to choose one side or the other for classroom debates about some controversial proposition in the documents.

Amendments proposed by Anti-Federalists during the state ratifying conventions of 1787-1788 can be stimulating foci for classroom debates today. For example, students might be asked to debate this amendment proposed by the New York ratifying convention: "That the Senators and Representatives and all Executive and Judicial Officers of the United States shall be bound by Oath or Affirmation not to infringe or violate the Constitutions or Rights of the respective States."[17] A classroom debate on this proposition would require students to draw upon the conflicting positions about federalism and republicanism in *The Federalist* and writings of the Anti-Federalists.

Here is another example of a possible topic for classroom debate, which comes from the list of amendments proposed by Anti-Federalists at the Pennsylvania ratifying convention: "That the power of organizing, arming and disciplining the militia remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree."[18] The spirit of this proposal has emerged in our time; recall the emphatic complaints and threats of resistance from Governor Dukakis about the possibility of sending members of the Massachusetts state militia on a training mission to Central America.

Many of the Anti-Federalist ideas for amending the Constitution of 1787 have modern counterparts. For example, current proposals for one six-year presidential term of office can be traced to the Anti-Federalists; so can calls for introducing to the national level of government the recall of elected officials and the referendum on legislation, which are employed in several state governments.

Issues-based teaching about *The Federalist* is not only stimulating, interesting, and enlightening, but it also informs students about the fundamental importance of the Anti-Federalist side of the argument. Herbert Storing, the late expert on the Anti-Federalists, provides justification for teaching both sides of the great debate on the Constitution of 1787: "If . . . the foundation of the American polity was laid by the Federalists," said Storing, "the Anti-Federalist reservations echo through American history; and it is in the dialogue, not merely in the Federalist victory, that the country's principles are to be discovered."[19]

Course-wide Infusion of Content. In teaching ideas of *The Federalist* and the Anti-Federalists, we should begin with the origins of the United States. Lessons about these political foes should be parts of instructional units on ratification of the Constitution in American government and history courses. James Madison would agree. He advised that the "key" to the "legitimate meaning" of the Constitution would be found "not in the opinions or intention of the body which planned and proposed the Constitution, but in the sense attached to it by the people in their respective State Conventions, where it received all the authority which it possesses."[20]

However, teachers should not restrict their treatments of *The Federalist* and the Anti-Federalist writings to the founding period. There are other entry points in the curriculum for these materials and the ideas in them. For example, excerpts from these classic documents are applicable to several parts of the high school government course that focus on principles of constitutional democracy, such as the standard lessons on separation of powers, checks and balances, federalism, the presidency, the Congress,

the federal judiciary, and the civil rights and liberties of individuals.

High school teachers of United States history can refer to *The Federalist* in their treatments of issues about states' rights and federalism that led directly to the Civil War. Furthermore, the Civil War Amendments to the Constitution, especially the 14th Amendment, can be examined fruitfully from the perspective of *The Federalist*. The same point can be made about the applicability of ideas in *The Federalist* to studies of constitutional changes from the Progressive Era to our own time. Issues in landmark cases of the Supreme Court can also be studied in relationship to ideas in *The Federalist*, since the Justices often referred to these ideas as they formed opinions in these cases.

World history teachers might explore with students the European roots of ideas in *The Federalist*. They might also teach about connections of the Enlightenment in Europe to the theory and practice of politics in 18th-century America. Finally, teachers and students of world history might explore the worldwide influence of American ideas on constitutional democracy, especially original ideas of *The Federalist* about ordered liberty and free government.

Conclusion

If Madison were here today, he probably would be pleased with this final recommendation about a global perspective on *The Federalist*. His faith in the American concept of free government was so strong that he dreamed of a time when it might spread throughout the world. He wrote: "The free system of government we have established is so congenial with reason, with common sense, and with a universal feeling, that it must produce . . . a desire of imitation. . . . Our Country, if it does justice to itself, will be the workshop of liberty to the . . . World."[21]

But "Our Country" cannot "be the workshop of liberty" that Madison desired unless each new generation in this country develops a reasoned commitment to the principles of free government in our most fundamental public documents, foremost of which are the Declaration of Independence, the Constitution, and *The Federalist*. This reasoned commitment, of course, will be the consequence of effective civic education. It can happen no other way.

Effective civic education requires recognition of the imperfections of free government (constitutional democracy) at particular places and times and reflective thought about how to improve it. This, too, Madison would approve. Near the end of his life, he wrote: "No government of human device and human administration can be perfect. . . . [The government] which is the least imperfect is therefore the best government. . . . [T]he abuses of all other governments have led to the preference of republican governments as the best of all governments, because the least imperfect."[22]

Thus, education for constitutional democracy is not an ideological exercise, not a means to blind faith in dogma. Rather, it is an extension to each new generation of citizens of the challenge confronted by Madison and others during the founding period—the challenge of coping with the enduring issues of constitutional democracy, of improving the system incrementally through responses to these issues, and of passing on the tradition of free government (and the issues inherent in it) to the next generation. Ideas in *The Federalist* can contribute to this kind of education on the principles of free government.

If you accept this view of education for free government, then you will take on the challenge of teaching *The Federalist* in your classrooms and communities. And if you do this, take pleasure in the certainty that James Madison would applaud your efforts. "What spectacle can be more edifying or more seasonable," he wrote, "than that of Liberty & Learning, each leaning on the other for their mutual & surest support?"[23]

Notes

1. Alexander Hamilton, James Madison, and John Jay, *The Federalist*. This collection of 85 papers in support of the Constitution of 1787 was first published in 1788 by McLean and Company of New York, NY. There are several excellent editions of *The Federalist* in print. Two examples are Jacob E. Cooke, editor, *The Federalist* (Middletown, CT: Wesleyan University Press, 1961) and Isaac Kramnick, editor, *The Federalist Papers* (New York: Viking Penguin Inc, 1987).

2. Letter from Thomas Jefferson to James Madison, 18 November 1788, quoted in Isaac Kramnick, "Editor's Introduction," *The Federalist Papers*, 11.

3. *Cohens v. Virginia* (1821), quoted in Roy P. Fairfield, "Introduction," *The Federalist Papers* (Baltimore: Johns Hopkins University Press, 1981), xiii.

4. Letter from George Washington to Alexander Hamilton, 28 August 1788, in Saxe Commins, editor, *Basic Writings of George Washington* (New York: Random House, 1948), 546.

5. Charles A. Beard, *The Enduring Federalist* (Garden City, New York: Doubleday & Company, Inc. 1948), 9.

6. Morton White, among others, is critical of Charles Beard's interpretation of *The Federalist* No. 10 and No. 31; see *Philosophy, The Federalist, and the Constitution* (New York: Oxford University Press, 1987), 3-6.

7. Clinton Rossiter, "Introduction," *The Federalist Papers* (New York: New American Library, 1961), vii.

8. Richard B. Morris, *Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution* (New York: Holt, Rinehart, and Winston, 1985), 21.

9. William A. McClenaghan, *Magruder's American Government* (Newton, MA: Allyn and Bacon, Inc., 1987), 50, 51, 56, 343, 370-371; the complete text of *The Federalist* No. 10 appears on pages 759-763.

10. Other widely used high school government textbooks, which provide less coverage of *The Federalist* than does *Magruder's American Government*, are listed by publisher and title: Coronado Publishers, Inc., *We Are One* (1986); McGraw-Hill Book Company, *American Government* (1983); Charles E. Merrill Publishing Company, *American Government: Principles and Practices* (1987); Scribner Educational Publishers, *Government in the United States* (1987); Scott, Foresman and Company, *Consent of the Governed* (1987). High school history textbooks tend to provide even less coverage of *The Federalist* than the government textbooks do. The introductory-level college government textbooks provide more coverage of *The Federalist* than high school textbooks do, but they, too, seem rather limited in their treatments of this classic; see Danny M. Adkison and Lisa McNair Palmer, "American Government Textbooks and *The Federalist Papers*," *The Political Science Teacher* 1 (Winter 1988): 1, 15-17.

11. Roy P. Fairfield, "Introduction," *The Federalist Papers*, xix.

12. Diane Ravitch and Chester E. Finn, Jr., *What Do Our 17-Year-Olds Know? A Report on the First National Assessment of History and Literature* (New York: Harper & Row, Publishers, 1987), 55-58.

13. Letter from James Madison to William T. Barry, 4 August 1822, in Marvin Meyers, editor, *The Mind of the Founder: Sources of the Political Thought of James Madison* (Hanover, NH: University Press of New England, 1973), 343-344.

14. *The Federalist* 10 and 51 discuss the danger of majoritarian tyranny and how to deal with it; in addition, see Madison's letter to Thomas Jefferson, 17 October 1788, in Marvin Meyers, editor, *The Mind of the Founder*, 156-160.

15. Several books about *The Federalist* are listed here that might be helpful to teachers interested in the paradoxes and perennial issues of constitutional democracy: Martin Diamond, *The Founding of the Democratic Republic* (Itasca, IL: F.E. Peacock Publishers, Inc. 1981); Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore: Johns Hopkins University Press, 1960); David F. Epstein, *The Political Theory of The Federalist* (Chicago: The University of Chicago Press, 1984); Adrienne Koch, *Power, Morals, and the Founding Fathers: Essays in the Interpretation of the American Enlightenment* (Ithaca, NY: Cornell University Press, 1961); Neal Riemer, *James Madison: Creating the American Constitution* (Washington, DC: Congressional Quarterly, Inc., 1986); Morton White, *Philosophy, The Federalist, and the Constitution* (New York: Oxford University Press, 1987); and Garry Wills, *Explaining America: The Federalist* (Garden City, NY: Doubleday & Company, Inc., 1981).

16. Letter from James Madison to Henry Lee, 25 June 1824, in Adrienne Koch, editor, *The American Enlightenment* (New York: George Braziller, Inc., 1965), 471.

17. A complete list of constitutional amendments proposed by the New York ratifying convention is presented in Linda Grant De Pauw, *The Eleventh Pillar: New York State and the Federal Convention* (Ithaca: NY: Cornell University Press, 1966), 297-302.

18. A complete list of constitutional amendments proposed by the Anti-Federalists at the Pennsylvania ratifying convention appears in a primary document, "The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to Their Constituents," in Herbert Storing, editor, *The Anti-Federalist* (Chicago: The University of Chicago Press, 1985), 201-223.

19. Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: The University of Chicago Press, 1981), 72.

20. Letter from James Madison to Thomas Ritchie, 15 September 1821, quoted in Drew R. McCoy, *The Last of the Fathers: James Madison and the Republican Legacy* (Cambridge, England: Cambridge University Press, 1989), 76.

21. Quoted in Adrienne Koch, *Power, Morals, and the Founding Fathers* (Ithaca, NY: Cornell University Press, 1961), 105.

22. Ibid., 115.

23. Letter from James Madison to William T. Barry, 4 August 1822, in Marvin Meyers, *The Mind of the Founder*, 346.

Background Paper 2

James Madison And The Founding of The Republic

A.E. Dick Howard

James Madison—by common consent, the Father of the nation's Constitution—was in many ways an unlikely candidate for the historic role he played in the founding of our republic. Madison was not what we today would call "charismatic;" indeed, for strong personality, it is Dolley, not James, that history remembers.

Unprepossessing in appearance—he stood only five feet six inches tall—and often in ill health during his early years, Madison lacked the majestic bearing, physical prowess, and martial skills of George Washington. His prose, while copious and competent, missed the bite of Paine or the elegance and lucidity of Jefferson. In an age when public speaking was a highly prized political tool, Madison was plagued by a weak voice and hobbled by self-consciousness. Madison was so unimpressive a public speaker that he felt suited neither for the ministry nor the law as a profession (either of which would have been a natural vocation for a person of Madison's intellectual interests).

Madison more than made up for his shortcomings, however, with his rigorously logical mind, appetite for reading, and indefatigable industry. As he matured, he drew around him a circle of important friends who recognized in him a quiet but keen sense of humor, a potential for iconoclasm, and unshakable integrity and convictions.

History can appreciate how Madison's strengths came to outweigh, by any measure, whatever may have been his limitations. For it is Madison who, more than any other founder, shaped our constitutional system of government. How this came to be—how Madison's ideas of politics and government were formed, and how he put those ideas to work—makes a fascinating story.

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Madison was born to James Madison, Senior, and Nelly Conway Madison, both from Virginia's landed gentry, on March 16, 1751, at the home of his maternal grandmother at Port Conway on the Rappahannock River. Shortly after his birth, the family moved west to the Rapidan River, in Orange County. The trip was only fifty miles or so, but it took the Madisons from the Tidewater to the Virginia Piedmont at the foot of the Blue Ridge Mountains. Both in Madison's day, and for decades after the revolution, life and politics in Virginia were heavily colored by differences in outlook conditioned by living in the east (where established power lay) and in the more westerly regions.

James Madison thus grew up, as did Thomas Jefferson (who lived only thirty miles away), with that strange blend of rustic life and cultivated social and intellectual discourse that marked plantation life in the Piedmont. At the same time, growing up at the family seat at Montpelier, young James Madison enjoyed the leisure purchased by slavery—a leisure employed in the education of a young Virginia gentleman.

After early education at home and at Donald Robertson's school on the Mattapony, Madison entered the College of New Jersey (now Princeton University), in 1769. Madison's choice of Princeton was distinctly unusual; a young Virginia gentleman was likely to attend the College of William and Mary at Williamsburg. It seems that Madison was swayed by his admiration for Thomas Martin, a tutor recently graduated from Princeton. Moreover, Madison (and his father) may also have been drawn by Princeton's eighteenth-century reputation for religious strictness and staunch patriotism. These qualities were exemplified in John Witherspoon, the Edinburgh-educated President, an active Presbyterian, who had come to Nassau Hall shortly before Madison became a student there.

The decision to go to Princeton was a momentous one for Madison, for it brought him directly under the influence of the ideas of the Scottish Enlightenment. At the college, Madison encountered an early experiment with what would become a staple of American education in the late eighteenth and early nineteenth centuries—a curriculum heavily influenced by the Scottish school. Edinburgh, which produced many of the intellectual leaders of Madison's younger years, had emerged as the most progressive English-speaking university. While the figures associated with the Scottish Enlightenment varied considerably in their views, the general thrust was an appeal to "common sense," a belief that all men possess an innate sense that enables them to distinguish between good and bad, truth and falsehood, beauty and ugliness. The Scottish philosophers, especially Thomas Reid and Francis Hutcheson, combined their belief in "common sense" with Whiggish patriotism, a "plain" rhetorical style, a plea for empirical investigation of nature (including human nature and political institutions), and a program for a more practical education.

John Witherspoon's Princeton was not friendly to all Scottish thinkers (certainly not free-thinking sceptics like David Hume), and many vestiges of an earlier educational model remained. But Madison eagerly entered into a remarkable political education. He was active in the newly founded American Whig Society, a political club that included Hugh Henry Brackenridge, the gifted writer and jurist; Philip Freneau, soon to become American's leading poet; William Bradford, later attorney general under Washington; and John Henry of Maryland, later a senator and governor. Above all, Madison devoted himself to an intense study of "The Law of Nature and of Nations." With what he recalled as the "minimum of sleep and the maximum of application," he finished his bachelor studies in less than three years.

Madison was a diligent student, especially in history and government. Following his graduation, he spent several more months studying Hebrew, law, and ethics under Witherspoon. Madison's Princeton years brought him tutelage in such works as those of Locke, Montesquieu, Harrington, Grotius, and Hobbes. Through his grounding in Scottish intellectual attitudes, Madison came to appreciate the notion—a fundamental assumption among Enlightenment writers—that the study of history yielded generalizations about human nature and thus furnished guidelines for the governance of human affairs. Thus the stirrings of empiricism (part political theory, part embryonic sociology) played an important part in shaping Madison's thinking about laws and constitutions.

Some years later, therefore, when Madison argued in *The Federalist* for the ratification of the new Constitution, he stressed an appeal to "experience . . . that last best oracle of wisdom." Madison's appeal was no submission to the fetters of the past. Quite the contrary, Madison looked to experience to illuminate a progressive future. As he said in *Federalist* No. 14: "Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?"

When Madison returned to Montpelier in 1772, he continued his studies and tutored his younger siblings while pondering his own future. Plagued with ill health and depressed by the death of a close friend from Princeton, Madison brooded over his prospects. "I am too dull and infirm now," he wrote, "to look out for any extraordinary things in this world for I think my sensations for many months past have intimated to me not to expect a long or healthy life."

Melancholia soon gave way to a passionate interest in public events, nurtured by his inquiring mind. One of the earliest controversies to engage Madison's attention—emblematic of his overarching concern for the freedom of the human spirit—concerned religious liberty. Local persecutions of Baptists and other dissenters moved Madison to write to a friend that "well meaning men" were in jail for publishing their religious sentiments. He prayed "for Liberty of Conscience to revive among us." Correspondence about political events led to more active roles for Madison, including a seat on Orange County's committee of safety.

In May 1774 Lord Dunmore dissolved Virginia's assembly. The burgesses simply repaired to a nearby tavern and proceeded to form the first of a series of conventions that functioned as the effective government of the colony. In 1776 Madison was elected to the Virginia Convention, representing Orange County. At twenty-five he was one of the youngest members. In May 1776 the convention took the momentous step of instructing Virginia's delegates to the Continental Congress, then meeting in Philadelphia, to introduce a resolution calling for independence from Great Britain.

In moving for independence, the convention also created a committee to draft a declaration of rights

and a frame of government for Virginia. The principal draftsman of Virginia's new constitution was George Mason, a well-read and politically active planter from Fairfax County. In the debates over the new charter, Madison's chief contribution came when the delegates took up the question of religious freedom. Mason's draft provided that "all Men should enjoy the fullest Toleration in the Exercise of Religion, according to the Dictates of Conscience. . . ." This approach, grounded in John Locke's *Letter on Toleration*, ensured only a limited form of religious freedom—toleration of dissenters in a state where there was an established church. Madison, however, wanted stronger language. He drafted a substitute declaring that "all men are equally entitled to the full and free exercise of religion"—language sounding of natural right rather than toleration.

Madison's resolution also declared that "no man or class of men ought, on account of religion to be invested with any peculiar emoluments or privileges. . . ." In the course of debate, however, Madison was obliged to drop this clause, which would surely have disestablished the Anglican Church in Virginia and probably also have barred state support of religious sects generally. The question of disestablishment remained to be settled in 1786, with the passage of Jefferson's Statute for Religious Freedom.

In 1777 Madison suffered the only defeat of his electoral career. It was customary at that time for candidates for public office to ply the voters at the polls with some rum or hard cider. Madison (perhaps with the shade of Witherspoon looking over his shoulder) thought it "inconsistent with the purity of moral and of republican principles" to sully an election with the "corrupting influence of spirituous liquors." The voters of Orange County seem to have been offended by this display of virtue. (They may well have decided Madison was being arrogant or perhaps simply being tightfisted with his money.)

Madison was not out of public office long. Remembering the impression he had made at the Virginia convention in Williamsburg, the leadership of the new state government chose Madison as one of the eight members of the Council of State, a body that worked closely with the governor in carrying out the Commonwealth's executive business.

Three years later, he served as a delegate to the Continental Congress. Between 1780 and 1783, when the Peace Treaty was signed with Great Britain, Madison was immersed in national rather than merely regional politics. In 1780 he wrote the instructions to John Jay, American minister to the court of Spain, supplying Jay with arguments supporting free navigation of the Mississippi by the United States. Spain claimed a monopoly on navigation of the lower Mississippi, while the United States claimed the lands between the mountains and the Mississippi, as well as navigation rights, derived from England's 1763 treaty ending the last French and Indian War.

In another "national" matter of great urgency, Madison took the leading role in fashioning the compromise over western lands. Virginia, under its colonial charter, had vast territorial claims, asserting dominion over what are now the states of Kentucky, Ohio, Indiana, Michigan, Illinois, Wisconsin, and parts of Pennsylvania and Minnesota. Other states likewise claimed western lands, and frequently these claims overlapped one another. Land companies, liberally doling out rum to Indian tribes, speculated with millions of acres of land. It was Madison who, with parliamentary skill, steered through Congress the terms by which the eastern states would cede land for the common benefit of the American nation. The settlement fashioned by Madison and his colleagues formed the basis for national land policy under which state after state would be added to a union that ultimately would stretch from ocean to ocean.

Returning to his home at Montpelier in December 1783, Madison carried on his intellectual pursuits, including the study of law. As if in training for the task ahead of him in Philadelphia four years later, Madison made a particular study of confederations, ancient and modern. He wrote to Thomas Jefferson, then in Paris, asking his friend to buy him books, especially those throwing light on the "general constitution and droit public of the several confederacies which have existed"—leagues such as those of ancient Greece and Switzerland.

Jefferson, with his characteristic energy, saw to it that a stream of books flowed westward to Madison—nearly 200 volumes in all. Madison's reading ranged from Plutarch and Polybius to Mably and Montesquieu. In the historians he found repeated confirmation of what was becoming a favorite Madisonian thesis; a confederacy could not hold together without a strong federal center. One by one, Madison considered the strengths and weaknesses of the confederacies, ancient and modern—the Lycian, the Amphictyonic, the Achaean, the Helvetic, the Belgic, the Germanic. Out of these musings came a manuscript of forty-one pages, describing these confederacies, analyzing their federal nature, and summing up each section with conclusions on "The Vices of the Constitution." Much of this essay, even

Vices of the Constitution." Much of this essay, even to its actual language, Madison later carried forward into Nos. 18, 19, and 20 of *The Federalist*.

Elected in 1784 to the Virginia House of Delegates, Madison quickly became a leader in the General Assembly. He had a hand in virtually every major project between 1784 and 1786—development of the state's resources, improvement in its commerce, and modernization of its laws. Looking to the western regions, he inaugurated a series of surveys to improve transmontane communications. Less successful—though unquestionably forward-looking—were Madison's efforts on behalf of public education; he was unable to persuade the Assembly to establish a general system of common schools as proposed by Jefferson's Bill for the More General Diffusion of Knowledge. (It took another century for a statewide system of public education to be established, by the Constitution of 1870.)

A landmark of this period was Madison's role in helping define the proper boundaries between church and state in a free society. In 1784 Patrick Henry and others proposed a general assessment to support ministers of religion. Madison, in reply, wrote his famous *A Memorial and Remonstrance against Religious Assessments*—a document that furnished the intellectual roots of the First Amendment's ban on an establishment of religion.

Religion, said Madison, "must be left to the conviction and conscience of every man," religious freedom being an "unalienable right." Government support of religion, he argued, is not necessary for the health of religion; to the contrary, its legacy has been "superstition, bigotry, and persecution." Moreover, aiding religion at public expense would "destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects."

Government's role, Madison concluded, is simple: "protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another." Madison's spirited defense of religious freedom and of the separation of church and state helped defeat Henry's bill. In its place the General Assembly enacted Jefferson's Bill for Religious Freedom.

On the national scene, the mid-eighties were a time of discouragement for those who cared about the health of the American nation. The defects of the Articles of Confederation were increasingly apparent. Under the Articles, Congress had neither the power to tax nor to regulate commerce. The Articles declared that "each state retains its sovereignty, freedom, and independence," and the states were ever quick to assert and promote their own interests, at the expense of the national welfare.

Commercial rivalries were especially sharp. Concerned with building its own prosperity, a state was inclined to treat a sister state as it would a foreign nation. States without seaports were especially hard hit. New Jersey, finding itself between the ports of New York and Philadelphia, was, said Madison, like a "cask tapped at both ends." North Carolina, between Virginia and South Carolina, resembled a "patient bleeding at both arms." Indeed, Madison believed, most of the new nation's "political evils may be traced to our commercial ones."

The answer to these problems, Madison concluded, was to give Congress power to regulate commerce. As he told James Monroe, the states could no more exercise this power separately "than they could separately carry on war, or separately form treaties of alliance or commerce." After the Virginia legislature emasculated a bill calling for an enlargement of Congress's commercial powers, Madison drafted a resolution that called for the states to appoint commissioners to meet and consider "how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony. . . ."

Thinking it prudent to avoid intimations of influence by either Congress or commercial interests, Virginia proposed the meeting take place at Annapolis, in September 1786. Attendance was spotty; only five states were represented. Finding that they could accomplish little, the delegates at Annapolis decided that stronger measures were necessitated. They resolved that the states should appoint commissioners to meet at Philadelphia the following year "to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union" and to report such proposed changes to Congress.

No one who attended the great gathering at Philadelphia in 1787 was better prepared for the job of constitution-making than Madison, who came as a member of the Virginia delegation. His years of study paid rich dividends. Before arriving at Philadelphia, Madison wrote "Notes on Ancient and Modern Confederacies" and a paper on the "Vices of the Political System of the United States." In "Vices," Madison noted that, lacking coercive power, the federal system under the Articles lacked "the great vital principles of a Political Constitution" and was in fact "nothing more than a treaty of amity" between so many independent and sovereign

states. Anticipating objections to centralized power—indeed, rehearsing the arguments he later used in *Federalist* No. 10—Madison argued that enlarging the sphere of government should lessen the insecurity of private rights, as society would become "broken into a greater variety of interests, of pursuits, and of passions, which check each other." In letters to Jefferson, Edmund Randolph, and George Washington, Madison set out his thinking about the nation's constitutional needs. The larger states should have fairer representation, and the national government needed adequate authority to act in those areas requiring uniformity. In particular, Madison thought there should be national power, including authority in the federal courts, to override state laws in conflict with national legislation. To Washington, Madison summed up his middle ground: "Conceiving that an individual independence of the States is utterly irreconcilable with their aggregate sovereignty; and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for some middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities whenever they can be subordinately useful."

Although called merely to draft amendments to the Articles of Confederation, the Philadelphia convention soon moved to more ambitious business—the writing of a new constitution. Advocates of reform had a head start. A caucus of Virginians produced the "Virginia Plan," which Madison played the major role in shaping. Introduced by Randolph four days after the convention opened, the Virginia Plan proposed a national executive, a national judiciary, and a national legislature of two houses, apportioned according to population and empowered to legislate "in all cases to which the separate States are incompetent." Madison's scheme also included a Council of Revision, drawn from the national executive and judiciary, which could veto laws passed by Congress or by the state legislatures.

All in all, the thirty-six-year-old Madison was the dominating spirit of the Philadelphia convention. Certainly his influence on the convention was such that he has been aptly described as the "master-builder of the Constitution." His winning ways, persuasive powers, and command of constitutional principles deeply impressed the other delegates. South Carolina's Pierce Butler later wrote that Madison blended "the profound politician, with the Scholar" and that in the "management of every great question he evidently took the lead in the Convention."

Many of Madison's specific ideas, for example, the revisionary council to veto state and congressional legislation, failed to be adopted. Yet, in addition to furnishing the basis for discussion, his plan laid down the basic features that distinguished the Constitution as finally agreed to by the convention—three branches in the federal government (thus institutionalizing Montesquieu's notions of the separation of powers) and sufficient authority in the central government to provide national solutions for national problems.

As if his intellectual contributions were not enough, Madison was also the convention's main, if unofficial, recorder. Using a self-invented shorthand to speed his note taking, Madison carefully transcribed each speech. As he reported later, "It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one."

His account of the convention was not published until 1840, four years after his death, because Madison scrupulously observed the secrecy imposed on convention delegates. Once published, however, his notes provided a remarkably detailed account of the proceedings, adding, as Madison foresaw, an essential "contribution to the fund of materials for the History of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world."

As the country turned to the debate over ratification of the proposed Constitution, Madison once again was a leader. Together with Alexander Hamilton and John Jay, Madison wrote essays for New York newspapers. The series of essays was introduced by Alexander Hamilton in the New York *Independent Journal* on October 27, 1787. Madison's first contribution, *Federalist* No. 10, appeared on November 22. Of the eighty-five essays—published in 1788 as *The Federalist*—Madison wrote twenty-nine.

The Federalist has few competitors as America's single most important contribution to political theory and to the art of governance. In *Federalist* No. 10, Madison saw a central problem of government—in terms that are uncannily prescient—as being to reconcile rivalries among competing economic groups. Madison looked to the new Constitution to control the excesses of "faction"—factions being those groups which, united by some common interest (such as landed or mercantile interests), pursue ends adverse to the rights of others or to the greater good. "The regulation of these various and interfering interests," says Madison, "forms the

principal task of modern legislation"; left to their own devices the most powerful factions must prevail. The variety of interests likely to be represented in the national legislature would furnish a safeguard: "The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States."

As *Federalist* No. 10 reveals, Madison was under no illusions about the nature of man, even within the salubrious environment of a republic. "What is government itself," he asked in *Federalist* No. 51, "but the greatest of all reflections on human nature? If men were angels, no government would be necessary." Heir to Enlightenment notions of natural rights and limited government, Madison realized that a popular government can be as tyrannical as a monarch. His pragmatic ideas about government, rooted in a Lockean empirical tradition, furnish a striking contrast to French revolutionary thought, which, combining the imperatives of Rousseau's General Will and the politics of popular sovereignty, ultimately propelled France into the Napoleonic era.

Throughout Madison's *Federalist* essays are found devices for addressing the practical problems of government. In *Federalist* No. 39, Madison emphasized the dual nature of the new government: "The proposed Constitution therefore is in strictness, neither a national nor a federal constitution; but a composition of both. In its foundation, it is federal, not national; in the sources from which the ordinary powers of the Government are drawn, it is partly federal, and partly national: in the operation of these powers, it is national, not federal: In the extent of them again, it is federal, not national: And finally, in the authoritative mode of introducing amendments, it is neither wholly federal, nor wholly national."

Turning, in *Federalist* No. 48, to the relations among the several branches of the federal government, Madison pointed to the benefits of having checks and balances among those branches. Mere "parchment barriers"—Madison's reference is obviously to the original state constitutions—are not enough to halt "the enroaching spirit of power." As a total separation of powers is unworkable, the only way to avoid an undue concentration of powers in one branch of government is to have the several branches "so far connected and blended as to give each a constitutional control over the others . . . ."

The new Constitution, all in all, was one of balance—of states and the central government protected in their respective interests, of power distributed among the branches of the federal government, of limits upon the opportunities of individuals or factions to work their way in derogation of the common good or of the inalienable rights of the citizen.

As Madison and Hamilton added essay after essay to the New York debate, they did more than help ensure ratification of the new Constitution. They gave American constitutionalism its first coherent base in political theory. The Constitution owed much to the give and take of the Philadelphia convention, but Madison was able to make a virtue of that necessity. At first he had resisted efforts to retain powers in the states; now he became an advocate for blended state and federal power.

So elegantly and thoroughly was Madison's defense of the proposed charter marshalled in *The Federalist* that the essays quickly became, and have remained, essential glosses on the Constitution. Jefferson prescribed *The Federalist* as part of the curriculum at his University of Virginia. Chancellor Kent, in his great *Commentaries*, praised the treatise, saying: "There is no work on the subject of the constitution, and on republican and federal government generally, that deserved to be more thoroughly studied." More than simply a tract on American government, *The Federalist* is the first significant analysis of modern federalism. Hence it has attracted the attention of intellectuals in other countries, for example, in England, Sir Henry Maine, James Bryce, and John Stuart Mill.

In the contest between Federalist and Antifederalists over ratification of the Constitution, no state's vote was more crucial than that of Virginia. In that commonwealth's ratifying convention, Patrick Henry and George Mason led a spirited opposition to approval of the new document. Madison was also a member of the convention, and his quiet cogent reasoning contrasted with Henry's rococo oratory. The final vote was a close one, 89-79 in favor of ratification. Had the vote gone the other way, it is hard to say what might have become of the Constitution, in light of Virginia's crucial place in terms of wealth, population, and influence in the nation.

An implicit condition of ratification in Virginia and in some other states was the Federalists' undertaking to see that a bill of rights was added to the Constitution. Madison was at first apprehensive about such amendments, fearing that they might imply the existence of powers never meant to be delegated to the central government. Moreover, he was concerned that any attempt to list the rights of the citizen would be incomplete.

As he explained to Jefferson, however, Madison saw that a bill of rights could serve two powerful

objectives. First, "the political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion." Second, there might be occasions when a bill of rights "will be a good ground for an appeal to the sense of the community."

When the first Congress met, Madison put aside any doubts he may have felt and led the battle for the Bill of Rights. On June 8, 1789, he initiated discussion of the issue by moving for a Committee of the Whole to receive the proposed amendments. Facing considerable opposition, he then brilliantly engineered passage of the bill, drafting the propositions, answering objections, and adroitly avoiding efforts by opponents to delay the votes or weaken the proposals.

In the course of the debate, Madison responded to the argument that the Bill of Rights would be ineffectual. If the amendments were incorporated into the Constitution, he submitted, "independent tribunals of justice will consider themselves in a peculiar manner the guardian of these rights; they [the courts] will be an impenetrable bulwark against every assumption of power in the Legislative or Executive. . . ." This explicit forecast of the courts' power of judicial review bore fruit in 1803, when Chief Justice John Marshall, in *Marbury v. Madison*, declared the Supreme Court's power to refuse to enforce an act of Congress that it found to be unconstitutional.

In framing the amendments, Madison winnowed the lists of proposals submitted by eight of the ratifying conventions. He largely ignored proposals (the work of Henry) that would have restricted federal power. Madison looked instead for inspiration to the twenty libertarian proposals drafted at the Virginia ratifying convention by Mason. As Madison's language wended its way through Congress, some provisions were revised, others dropped altogether (in particular, a proposal that would have forbidden the states to violate rights of conscience or press). But, in the end, Madison's propositions were the basis for nearly all the provisions embodied in the amendments ultimately adopted by Congress. Madison had won perhaps his most successful legislative battle—and all in the service of a cause that he had originally doubted.

In 1797 Madison voluntarily left public life, expecting to devote his time to farming his Montpelier estate. He also expected to devote more time to his new bride. Dolley Payne Todd was a twenty-six-year-old widow of a Philadelphia lawyer when Madison married her in September 1794, just four months after they were introduced. She was a vivacious and charming woman, whose social grace, beauty, and wit made her a political asset as well as a beloved and inseparable companion. Now Madison looked forward to a respite from the political conflict of Philadelphia—and to an opportunity to monopolize his wife's company.

The Federalists were now in full control of the national government. Madison, who had contributed so much to achieving a federal government, by now had become a recognized leader of the opposition, the Jeffersonian party. A dark chapter in Federalist rule was their enactment of the Alien and Sedition Acts, which outlawed "any false, scandalous and malicious writing" against the government, and under which opposition newspaper editors went to jail. The first victim was Congressman Matthew Lyon, of Vermont, who was jailed for publishing in his newspaper a letter charging President John Adams with a grasp for power and a thirst for adulation.

Federalist judges who tried cases under the Sedition Act, especially Justice Samuel Chase, displayed violent partisan bias against the accused. Madison's belief in "independent tribunals of justice" as an "impenetrable bulwark" of the Bill of Rights was gravely undermined. Accordingly, Jefferson and Madison turned to another breastwork—the states. From Jefferson's pen came the Kentucky Resolutions, from Madison's, the Virginia Resolutions. Both denounced the Alien and Sedition Acts as unconstitutional.

Jefferson's resolution was the more forceful, declaring the two laws to be "altogether void and of no force." Madison's language, though more muted, still called upon the states as the ultimate judges of the federal compact: "In case of a deliberate, palpable and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil. . . ." The doctrine of "interposition"—appealed to by South Carolinians in 1828—appeared to call for state nullification of federal legislation. But in 1800, as a member of the Virginia legislature, Madison wrote a 20,000-word report on the 1798 resolutions, in which he explained that those declarations were simply "expressions of opinion," for the purpose of "exciting reflection" on objectionable federal actions. However strongly understood, the Virginia Resolutions strikingly reflect Madison's sense of the need for balance wheels in the federal system. The man who in 1787 saw greater

central authority as one of the ways to ensure the common good in 1798 looked to the states to resist federal encroachment on individual rights.

The elections of 1800 brought Jefferson to the presidency, and Madison appeared once again in the national spotlight. In his autobiography, Madison rushed over his eight years of service under Jefferson in a single sentence: "In 1801 he was appointed Secretary of State and remained such until 1809." These eight years, however, played a profound role in Madison's later political fortunes, for during this period he not only cemented his political and personal ties with Jefferson but also identified himself with policies of the Jefferson administration.

In 1808 Madison was swept to the presidency by an electoral margin of 122 to 47. His years in office were dominated by the country's difficult relations with Great Britain. Angry at the impressment of American sailors, the plunder of American ships on the high seas, and threats by both England and France against neutrals venturing into a port of either nation's enemy, Jefferson's administration had secured enactment of embargo and non-importation measures. Committed to maintaining these economic pressures, Madison found himself dealing with strong opposition from Federalists in the Northeast (where American ships and sailors were idled by the economic warfare) as well as dissidents within the Jeffersonian Republican ranks.

For a short time it appeared as if negotiations might provide a solution. An agreement in 1809 seemed to respond to American grievances, but it collapsed when Britain's foreign secretary, George Canning, repudiated the negotiations of the British minister in Washington. By 1812 the diplomatic impasse seemed hopeless. With deep misgivings, Madison called upon Congress to declare war. The House supported him 79 to 49, the Senate by a more modest margin of 19 to 13.

The War of 1812 was an indecisive tragi-comedy of errors. Ironically, five days after war had been declared, the British cabinet revoked the Orders in Council (the proclamation threatening neutral ships entering French ports). But news traveled slowly in those days, and the message came too late to avert hostilities. The United States proved ill prepared for war. An invasion of Canada proved a fiasco; Detroit fell to the British with hardly a shot being fired. Only some fine seamanship, especially the *Constitution's* capture of the *Guerriere* in late summer, brightened the early war news.

By 1813 the Americans were shown some significant military successes by Captain Oliver Perry on Lake Erie and General William Henry Harrison at Detroit. But even though Madison had been reelected president in a race against "peace candidate" DeWitt Clinton of New York, Madison's opponents in Congress frustrated the war effort. When on August 1814, the British invaded Washington and burned the Capitol and the White House—with first Dolley, then the president, fleeing before them—a symbolic low point in the war was reached.

Despite the mixed successes of British troops, Great Britain was not anxious to continue with the war. Good news reached Washington on February 14, 1815, that a treaty of peace had been signed at Ghent. Days before, the nation's spirits had been buoyed as word spread of the Americans' greatest military victory of the war, General Andrew Jackson's decisive defeat of the British at New Orleans (a battle that had taken place after the peace treaty had been signed but before report of that event had reached America).

Although neither side conceded much in the treaty, the war had produced new American heroes (and a national anthem) and had demonstrated American resolve against British might in a "Second War of Independence." The Federalists, who had met in a convention in Hartford amid talk of national disunity, saw their efforts to derail Madison's policies swallowed up in the national surge of patriotic feeling. Peace brought renewed prosperity, and Madison could feel vindicated. Perhaps the most gracious assessment of Madison's presidency came from an old Federalist, John Adams. "Notwithstanding a thousand Faults and blunders," Adams wrote to Jefferson, Madison's administration "has acquired more glory, and established more union; than all his three predecessors put together"—one of those presidents, of course, being Adams himself.

In 1817 Madison left office, returning to Montpelier. His last public appearance was in 1829, at the Virginia Constitutional Convention of 1829-30. For all the dignitaries present—Madison, James Monroe, John Tyler, and John Marshall were among its members—the convention must have struck Madison as a pale shadow of the Philadelphia gathering of 1787. While the convention's debates make compelling reading—they have been called "the last gasp of Jeffersonian America's passion for political disputation"—it accomplished little of the constitutional reform (of the franchise, legislative apportionment, and the self-perpetuating county court system) for which Jefferson and others had been calling for years.

The last two decades of Madison's life from 1817 to 1836, were devoted largely to private pursuits. An apostle of scientific agriculture, Madison urged his

fellow farmers to forego old practices that were exhausting the soil. Concerned about the problem of slavery—an issue he and his fellow delegates at Philadelphia had left as unfinished business—he accepted the presidency of the American Colonization Society, which encouraged the manumission and return of slaves to Africa. For the most part, Madison spent his final years at Montpelier corresponding with friends, entertaining travelers who passed his way, and generally overseeing his plantation. His last public message, dictated to Dolley, showed concern about rising sectional tensions; it called upon his fellow countrymen to ensure that "the Union of the States be cherished and perpetuated."

Background Paper 3

The Constitutional Thought of the Anti-Federalists

Murray Dry

Although they claimed to be the true federalists and the true republicans, the men who opposed the Constitution's unconditional ratification in 1787-1788 were called Anti-Federalists. The leading opponents from the major states included Patrick Henry, George Mason, and Richard Henry Lee from Virginia, George Clinton, Robert Yates, and Melancton Smith from New York, John Winthrop and Elbridge Gerry from Massachusetts and Robert Whitehill, William Findley, and John Smilie from Pennsylvania. They all agreed that the document produced by the Convention in Philadelphia was unacceptable without some amendments. Since most state constitutions contained bills of rights, the need for a similar feature for the national constitution formed the Anti-Federalists' most effective argument against unconditional ratification. The national Bill of Rights is the result of that dialogue.

Nevertheless, the Anti-Federalists' major contribution to the American founding lay more in their critical examination of the new form of federalism and the new form of republican government than in their successful campaign for a bill of rights. The Anti-Federalists sought substantial restrictions on federal power, which the amendments subsequently adopted did not provide. Suspicious of a strong national government, these opponents nevertheless failed to agree on an alternative constitutional arrangement. Still, the legacy of the Anti-Federalists persists in our constitutional debates over federalism and republican government.

Anti-Federal constitutionalism finds its most thoughtful and comprehensive expression in the *Letters of the Federal Farmer* and the *Essays of Brutus*, attributed to Richard Henry Lee and Robert Yates, respectively. Although authorship remains uncertain, these writers covered all major constitutional questions in a manner that required, and received, the attention of "Publius," the penname adopted by Alexander Hamilton, James Madison, and John Jay, authors of the famous *Federalist* papers.

This essay will discuss Anti-Federal constitutionalism in three parts: federalism, the separation of powers, and the bill of rights.

Republican Government and Federalism

The Anti-Federalists claimed to be the true federalists because they were the true republicans. Consequently, we begin with their account of republican government and its relation to federalism.

The Anti-Federalists believed that to maintain the spirit of republican government, which was the best defense against tyranny, individuals needed to know one another, be familiar with their governments, and have some direct experience in government. Only then would the citizenry possess a genuine love of country, which is the essence of republican, or civic, virtue.

The Anti-Federalists espoused the then traditional view of republican government, reflected in the first state constitutions, which emphasized the legislative branch of government. With the first federal constitution, the Articles of Confederation, the states, through their legislatures, retained effective control of federal men and federal measures. The delegates to Congress were chosen by the state legislatures and were subject to being recalled. The federal power to raise taxes and armies not only required a vote of nine states, but, even after such a vote, it

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depended on state requisitions, which meant that the federal government depended on the good will of the states to execute the law.

In stark contrast, the Constitution proposed by the Federal Convention in 1787 provided the basis for a strong national government. Elections to the House of Representatives were by the people directly, not the states, and the federal powers over taxes and the raising of armies were completely independent of the state governments. This new form of federalism necessarily produced a new form of republicanism, the "large republic." Furthermore, Publius did not shrink from providing a positive argument in support of it. *Federalist* 10 justified the new form of republicanism, not only as the price of union but as the republican remedy to the disease of majority faction, or majority tyranny.

Because the Federalists saw a major danger not from the aggrandizing of the ruling few, but from the tyranny of the majority, they sought to restrain the influence of that majority in order to secure individual rights and the permanent and aggregate interests of the community. Such restraint was to be achieved through a large extended sphere, i.e., the constituencies of the federal government. These would be larger and more diverse than the constituencies of the states, and so would make majority tyranny more difficult, since more negotiation and compromise would be needed for any single faction to become part of a majority. In addition, the increased competition for office would produce better representatives and a more effective administration throughout the government.

Perhaps because he took republican government for granted, as a given in America, Publius understood it to require only that offices of government be filled directly or indirectly by popular vote. Furthermore, the representation of the people was satisfied by the fact of election, regardless of the contrast between the wealth and influence of the elected and the electorate.

To the Anti-Federalists, the people would not be free for long if all they could do was vote for a representative whom they would not know and who would be very different from them.

Because the Anti-Federalists emphasized participation in government, they argued that a small territory and a basically homogeneous population were necessary for a notion of the "public good" to be agreed upon. The Anti-Federalists did not insist that every citizen exercise legislative power. But they did emphasize representation of the people in the legislatures and on juries. By "representation" they meant that the number of people in a legislative district must be small enough and the number of districts large enough so that the citizens will know the people they are voting for and be able to elect one of their own—one of the "middling class." This latter phrase referred to the large number of farmers of modest means. A substantial representation of this agricultural middle class was possible even in the large states and necessary for the character of the governors to reflect the governed. Under the proposed constitution, argued the Anti-Federalists, this kind of representation would be impossible at the federal level, where the districts would contain at least 30,000 people.

Likewise, by participating in local jury trials, in civil as well as criminal cases, the people in their states acquired a knowledge of the laws and the operation of government, and thereby, argued the Anti-Federalists, they become more responsible citizens. It was feared that this responsibility would be lost when cases were appealed to the proposed national supreme court, which had jurisdiction on appeal over all questions of law and fact.

Since the Anti-Federalists believed that republican government was possible in the states but not in one single government for the entire country, only a confederacy, that is, a federal republic, could safeguard the nation's freedom. They understood such a form of government to have a limited purpose, primarily common defense. Hence, those who became Anti-Federalists originally favored limited amendments to the Articles of Confederation, rather than an entirely new constitution. When a new constitution became inevitable, they hoped to limit the transfer of political power from the states to the national government. They claimed to be the true republicans and the true federalists because they understood republican government to require a closely knit people attached to their government. They sought to grant only so much power to the federal government as was absolutely necessary to provide for defense. In this way, the distribution of governmental power, as between the nation and the states, would correspond to the distribution of representation. And while the Anti-Federalists did argue for an increase in the federal representation, that by itself would not have satisfied the requirement of republican government, as they saw it, since the people would always be more substantially represented in their state governments. According to the Anti-Federalists, the Federalists were not federalists but consolidationists; and the ultimate effect of the Constitution would be to reduce the states to mere administrative units, thereby eliminating republican liberty.

Federalism and the Constitution: The Legislative Powers

Already fearful of the Constitution's threat to republican liberty, the Anti-Federalists vehemently objected to the large number of specific powers granted to Congress, especially the taxing power and the power to raise armies. They found the undefined grants of power in the "necessary and proper" and the "supremacy" clauses (I,8 and VI,2) alarming as well. The government, Brutus claimed, "so far as it extends, is a complete one, and not a confederation," and "all that is reserved to the states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government." With the power to tax virtually unchecked, Brutus lamented that "the idea of confederation is totally lost, and that of one entire republic is embraced." The Anti-Federalists attempted to draw a line between federal and state powers, conceding to the federal government only those powers which were necessary for security and defense. Their most common tax proposal would have limited the federal government to a tax on foreign imports, leaving internal taxes, both on individuals and on commodities, to the states. This limitation would guarantee the states a source of revenue out of reach of the national government. If this federal tax source proved insufficient, the Anti-Federalists proposed turning to the states for requisitions, as was the case under the Articles of Confederation.

Brutus warned, as well, that the power "to raise and support armies at pleasure . . . tend(s) not only to a consolidation of the government, but the destruction of liberty." The Anti-Federalists generally took the position that there should be no standing armies in time of peace. Brutus proposed a limited power to raise armies to defend frontier posts and guard arsenals to respond to threats of attack or invasion. Otherwise, he maintained, standing armies should only be raised on the vote of two-thirds of both houses.

Publius' rejection of this position was complete and uncompromising. The "radical vice" of the Confederation had been precisely the dependence of the federal power on the states. The universal axiom that the means must be proportional to the end required that the national government's powers be adequate to the preservation of the union (*Federalist* 15, 23).

The Separation of Powers and Republican Government

The separation of powers refers primarily to the division of power among the legislative, executive, and judicial branches of government, but it also includes bicameralism, or the division of the legislature into a House of Representatives and a Senate. In this part, we begin with the Anti-Federalists' general approach to the separation of powers, which will be followed by accounts of their views on the Senate, the presidency, and the judiciary.

The Anti-Federalists attacked the Constitution's separation of powers from two different perspectives. Some, such as Centinel (a Pennsylvania Anti-Federalist), alleged that there was too much mixing and not enough separation; others, like Patrick Henry and the Maryland Farmer, asserted that there were no genuine "checks" at all. The first position opposed the special powers given to the Senate and the executive. The second argued that a true separation of powers depended upon social divisions not available in the United States, such as an hereditary nobility as distinct from the common people. The English Constitution drew on such divisions; social class checked social class in a bicameral legislature, and each was checked, in turn, by an hereditary monarch. While the Federalists celebrated the filling of all offices by election directly or indirectly, some Anti-Federalists, including Patrick Henry, argued that such elections would result in the domination of the natural, or elected, aristocracy in all branches of government, not a true "checks and balances" system.

The Senate

The Anti-Federalists feared that an aristocracy would emerge from the Senate, taking more than its share of power. A small number of individuals, elected by the state legislatures for six years, and eligible for reelection, shared in the appointment and treaty-making powers with the executive, as well as in the law-making process with the House of Representatives. In order to prevent Senators from becoming an entrenched aristocracy, the Anti-Federalists favored an amendment requiring rotation in office and permitting recall votes by the state legislatures. They also favored a separately elected executive council, which would have relieved the Senate of its share in the appointment power. None of these proposals was adopted.

The Executive

Anti-Federal opposition to the office of president was surprisingly limited. While Patrick Henry asserted that the constitution "squints toward mon-

archy," most of the Anti-Federalists accepted the unitary office and the "electoral college" mode of election.

The eligibility of the president to run repeatedly for office, however, did provoke substantial opposition, as did the absence of a special executive council, which would have shared the appointment power. Whereas Publius had argued that re-eligibility provides a constructive use for ambition, Federal Farmer replied that once elected a man will spend all his time and exercise all his influence to stay in office. The executive council would have weakened the power of the Senate, which concerned the Anti-Federalists even more than the president's power.

No Anti-Federalist expressed concern about the general phrase "the executive power," perhaps because it was unclear whether this was a grant of power or merely the name of the office. Some questioned the "commander-in-chief" clause, the pardoning power, and the authority to call either of both houses into special session. But in light of the difficulties of governing without an independent executive, which the country experienced under the Articles of Confederation, and the common expectation that George Washington would become the first president, the Anti-Federalists let their objections go.

The Judiciary

While many Anti-Federalists failed to discuss it, Brutus' account of the judicial power anticipated the full development of judicial review as well as the importance of the judicial branch as a vehicle for the development of the federal government's powers, both of which he opposed. By extending the judicial power "to all cases, in law and equity, arising under this Constitution," Article III permitted the courts "to give the constitution a legal construction." Moreover, extending the judicial power to equity as well as law (a division made originally in English law) gave the courts power "to explain the constitution according to the reasoning spirit of it, without being confined to the words or letter." Hence, Brutus concluded that "the real effect of this system will therefore be brought home to the feelings of the people through the medium of the judicial power."

Under the judicial power, the courts would be able to expand powers of the legislature and interpret laws in a way Congress did not intend. Brutus interpreted the grant of judicial power to all cases arising under the Constitution as a grant of "judicial review." He opposed this grant, because he thought the judges, who were appointed for life, should leave it to Congress to interpret the constitutional reach of its powers. That way, if Congress misinterpreted the Constitution by overextending its powers, the people could repair the damages at the next election. Brutus approved of the framers' decision, following the English Constitution, to make the judges independent by providing them with a lifetime appointment, subject to impeachment, and fixed salaries. But he pointed out that the English judges were nonetheless subject to revision by the House of Lords, on appeal, and to revision, in their interpretation of the constitution, by Parliament. Extending the judicial power to the American Constitution meant that there would be no appeal beyond the independent non-elected judiciary. Brutus did not think that impeachment for high crimes and misdemeanors would become an effective check, and while he did not mention it, he doubtless would have regarded the amendment process also as unsatisfactory.

Anti-Federalists, including Brutus, objected as well to the extensive appellate jurisdiction of the supreme court. Article III section 2 may have guaranteed a jury trial in criminal cases, but on appeal, the fate of the defendant would be up to the judges. The Anti-Federalists wanted to have the right of jury trials extended to civil cases and to have the results protected against appellate reconsideration.

Finally, Brutus objected to the "Madisonian compromise," which authorized, but did not require, Congress to "ordain and establish" lower courts. Except for the limited grant of original jurisdiction in the supreme court, judicial power, the Anti-Federalists argued, should have been left to originate in the states courts.

The Bill of Rights

The Anti-Federalists are best known for the Bill of Rights, since the Constitution would not have been ratified without the promise to add it. But the Bill of Rights was as much a Federalist as an Anti-Federalist achievement. The Anti-Federalists wanted a bill of rights to curb the power of the national government to intrude upon state power; the Bill of Rights, as adopted, did not address this question. Instead, it limited the right of government to interfere with individuals, and, as such, included provisions similar to those in the bills of rights in many of the state constitutions.

When the Federalists denied the necessity of a federal bill of rights, on the grounds that whatever power was not enumerated could not be claimed,

the Anti-Federalists pointed to the Constitution's supremacy and to the extensiveness of the enumerated powers to argue that there were no effective limitations on federal authority with respect to the states. None of the actual amendments, which were written up and guided through the House by Madison, followed the Anti-Federal proposals to restrict federal powers, especially the tax and war powers. As for what became the tenth amendment, Madison himself said that it simply clarified the existing enumeration of powers but changed nothing. Furthermore, when an Anti-Federalist tried to get the adverb "expressly" inserted before "delegated" in the amendment—"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"—his motion failed by a substantial margin.

The Anti-Federalists' demand for a bill of rights derived from their understanding of republican government. Such a form of government was mild in its operation and a public proclamation of their rights kept the people aware of them. Consequently, the Bill of Rights, even in its Federalist form, reflects Anti-Federal constitutionalism. But the amendments did not restrict the major federal powers over taxes, commerce, and war, or in any way limit implied powers. Furthermore, as Jefferson noted in a letter he wrote to Madison in 1789, by emphasizing individual rights, the Bill of Rights put a legal check in the hands of the judiciary. In other words, before he opposed the power of judicial review, Jefferson seemed to take its existence for granted. He argued that writing a bill of rights into the Constitution would provide judicial protection of those rights. Neither Jefferson nor the Anti-Federalists seemed to realize how a federal bill of rights, by strengthening the federal courts, would thus serve to strengthen Federalist constitutionalism.

Conclusion

The Anti-Federalists lost the ratification debate because they failed to present a clear and convincing account of a constitutional plan that stood between the Articles of Confederation, which they acknowledged was unable to provide for the requirements of union, and the Constitution proposed by the Federal Convention, which they feared would produce a consolidation of power. And yet the periodic and contemporary constitutional debates over federalism, over the extent of legislative and executive power, and over individual rights and judicial review reflect the different conceptions of republican government that were developed in the founding dialogue over the Constitution.

Any strict construction of federal power has much in common with Anti-Federalist constitutionalism. During the founding debate, opponents of a strong national government wanted to amend the Constitution; after ratification, Anti-Federalists had no choice but to interpret the Constitution to require limited federal government. The contemporary controversies over abortion, pornography, and sexual practices among consenting adults, and the issues surrounding the religion clauses of the First Amendment reveal disagreements over the scope of individual rights, on the one hand, and the legitimacy of government maintenance of community manners and morals on the other. These controversies resemble the founding debate over republicanism, where the Federalists focused on the security of individual rights and the Anti-Federalists expressed a greater concern for the character of republican citizenship, maintained in part through religion. Through such debates, Anti-Federalist constitutionalism, as applied to governmental structure and to moral qualities necessary for free government, thus remains an important part of our constitutional polity.

John Jay, co-author with James Madison of *The Federalist*, and first Chief Justice of the United States of America.

Source: Library of Congress

Part Two: Lessons

Part Two consists of six *Lesson Sets*. Each *Lesson Set* includes two *Teaching Plans* and two *Lessons* for students. Teachers have permission to copy the *Lessons* and distribute these copies to students in their classes.

The six *Lesson Sets* and twelve *Lessons* are listed below:

I. *The Federalist* in the Debate on the Constitution.
1. Federalists versus Anti-Federalists.
2. Publius Enters the Debate on the Constitution.

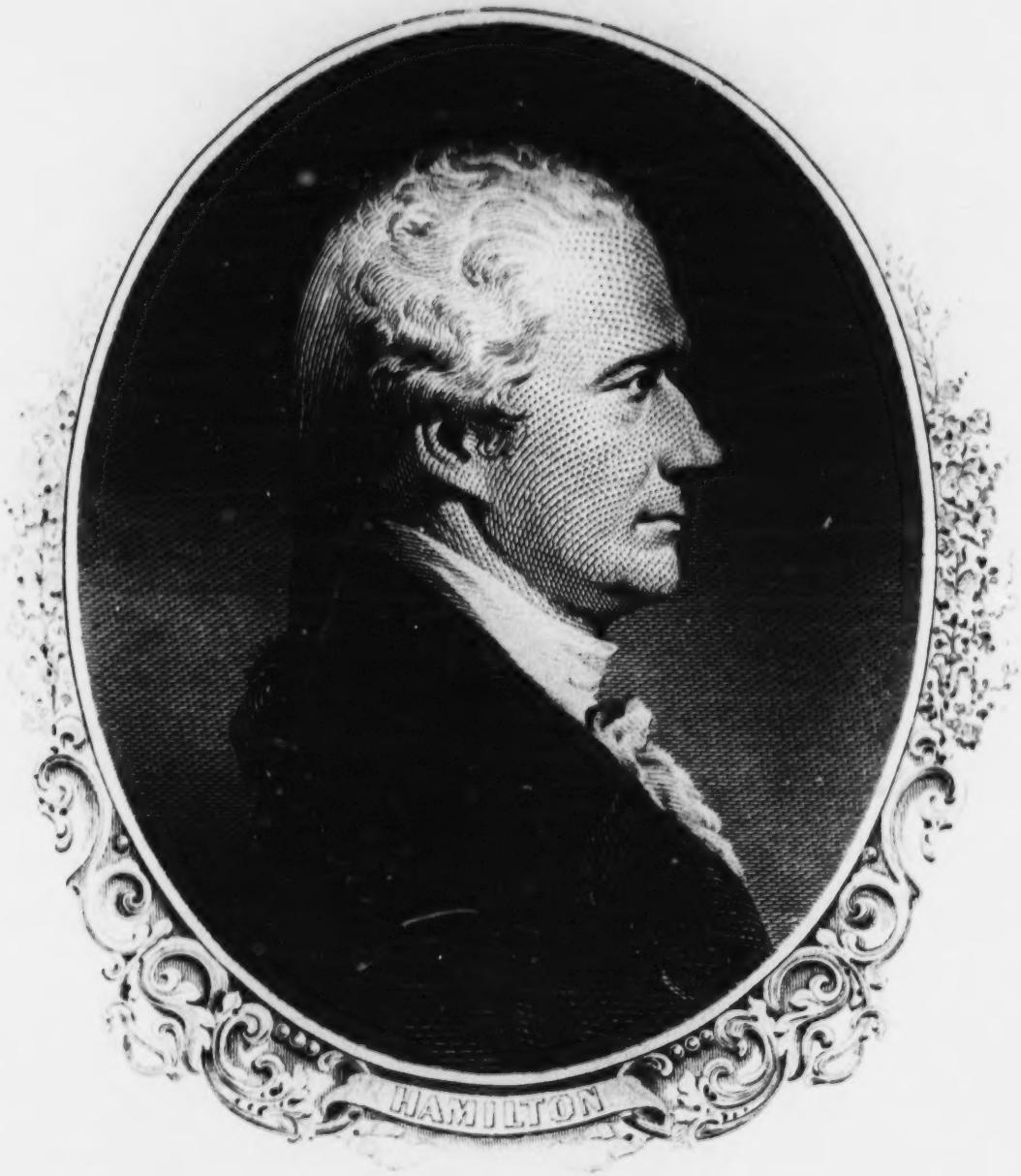
II. Majority Rule and Minority Rights in a Free Government.
3. Madison on Majority Rule and Minority Rights.
4. Brutus, the Anti-Federalist, on Free Government.

III. Federalism and Republicanism.
5. Madison on Federalism and Republicanism.
6. Anti-Federalists on Federalism and Republicanism.

IV. Separation of Powers and Limited Government.
7. Madison on Separation of Powers.
8. Centinel's Anti-Federalist Ideas.

V. National Security and Personal Liberty.
9. Madison on National Security and Personal Liberty.
10. The "Pennsylvania Minority" on Power and Liberty.

VI. James Madison, *The Federalist*, and the Bill of Rights.
11. Alternative Ideas on a Bill of Rights.
12. Chronology of Major Political Events, 1787-1791.



Alexander Hamilton, co-author with James Madison of *The Federalist*, and first Secretary of the Treasury in the federal government of the United States of America.

Source: Library of Congress

Lesson Set I
The Federalist in the Debate on the Constitution

On his deathbed (June 1836) James Madison offered parting words to fellow Americans: "The advice dearest to my heart and deepest in my convictions is that the Union of the States be cherished and perpetuated."

No one had done more than Madison to construct the political framework of the Union, embodied in the Constitution that he and other framers forged at the Federal Convention of 1787. During the ratification debate waged in the thirteen states during 1787-1788, he was one of the Constitution's most formidable defenders.

An extraordinary legacy of the ratification debate is *The Federalist*, a set of eighty-five papers that explained and supported the Constitution of 1787. Alexander Hamilton was the originator of this work and wrote fifty-one of the papers. James Madison was an inspired collaborator. He wrote twenty-nine of *The Federalist Papers*, including numbers 10, 37, 39, and 51, which are considered by many authorities to be the best of the lot. And what a magnificent collection of essays it was and is!

The Federalist has been judged in the past and present as *the* best work on first principles of constitutional government in the United States. Thomas Jefferson, for example, called it "the best commentary on the principles of government which ever was written." Two centuries later, Richard B. Morris, an eminent historian, concluded that *The Federalist* has continued to be judged as "profound, searching, challenging, and . . . everlastingly controversial."

This *Lesson Set* deals with the place of James Madison and *The Federalist Papers* in the great debate on ratification of the Constitution of 1787. The opposite positions of the Federalists and Anti-Federalists are presented as a backdrop to subsequent Lesson Sets (II-VI) that treat (a) core principles of constitutional government in *The Federalist*, (b) the contributions of James Madison to development of these principles, and (c) the alternative position of the Anti-Federalists.

This *Lesson Set* includes two *Teaching Plans* and accompanying *Lessons* for students: (a) No. 1: Federalists versus Anti-Federalists and (b) No. 2: Publius Enters the Debate on the Constitution.

Lesson 1: Teaching Plan
Federalists versus Anti-Federalists

Objectives

Students are expected to
1) explain the origin of the debate between Federalists and Anti-Federalists, 1787-1788;
2) understand the positions of the Federalists and Anti-Federalists in the debate on ratification of the Constitution of 1787;
3) distinguish examples of statements by Federalists from examples of statements by Anti-Federalists;
4) interpret and analyze primary sources on ideas of Federalists and Anti-Federalists.

Estimation of Time Needed to Complete This Lesson: No More Than Two Classroom Periods.

Opening the Lesson

Write the following words and dates on the chalkboard: Federalists, Anti-Federalists, 1787, 1788. Ask students to comment about the relationships between the words and the dates. Conduct a brief discussion to focus attention on the objectives and content of this lesson. Assign the introduction to the lesson and the sections about two Anti-Federalists' objections to the Constitution of 1787: Elbridge Gerry and Brutus (pseudonym for a writer who probably was Robert Yates of New York). Tell students they will read documents written by Gerry and Brutus that reveal central ideas in the Anti-Federalist position. Ask students to respond to the exercises that follow each document in preparation for a class discussion.

Developing the Lesson

Conduct a discussion on Elbridge Gerry's letter to the Massachusetts General Court. Focus the discussion on responses to the exercise that follow the document. The correct answers to the exercise, the statements that accurately describe Gerry's objections to the Constitution, are 1, 3, and 5. Require students to refer to relevant parts of the document as they discuss each of the seven items in this exercise. They should be asked to justify their responses to each statement with specific evidence from the document. Thus, the statements in the exercise become a means to careful and focused reading of the document by students. The students are required to respond with evidence from a primary source.

Continue the discussion by turning to the exercise following the essay by Brutus. The correct answers to item 1, the statements that accurately describe Brutus' objections to the Constitution, are c, d, e. Answers to item 2 may vary, but must be based on the contents of the two documents in this part of the lesson.

Assign the remaining pages of the lesson. Require students to answer questions about James Madison's letter to Thomas Jefferson—a report on the ratification debate—and to respond to the exercise at the end of the lesson, which tests their abilities to distinguish Federalist from Anti-Federalist ideas.

Concluding the Lesson

Conduct a concluding classroom discussion. Once again require students to justify answers with references to documents in this lesson.

Take up the Madison document first. In response to item 1, there is only one statement—item b—that accurately describes the contents of Madison's letter. Responses to item 2 will vary; require students to justify their answers with references to the documents in this lesson.

End the lesson with discussion of differences between Federalists and Anti-Federalists. Correct answers to the concluding exercise are presented below:

1. AF, Speech by Patrick Henry at the Virginia Ratifying Convention, June 1788.
2. AF, George Mason, newspaper article, November 1787.
3. F, James Madison, letter to Jefferson, October 1787.
4. X, Robespierre, leader of the French Revolution, Speech to the National Convention, February 1794.

Lesson 1
Federalists versus Anti-Federalists

Introduction to the Debate on Ratification

SEPTEMBER 17, 1787 (Philadelphia, PA): Forty-two delegates from twelve states (all of the United States except Rhode Island) gathered for the final meeting of the Federal Convention. The U.S. Congress had instructed them to meet "for the sole and express purpose of revising the Articles of Confederation [in order to] render the federal constitution adequate to the exigencies of Government & the preservation of the Union." But they went beyond their instructions and created a new Constitution to replace the Articles of Confederation. Now, at the end of a long, hot summer, they were ready to sign the product of their work and go home. Thirty-nine delegates signed and three refused: Elbridge Gerry of Massachusetts and George Mason and Edmund Randolph of Virginia.

SEPTEMBER 28, 1787 (New York, NY): The Congress of the United States voted to send the proposed Constitution to the legislature of each of the thirteen States of the Union. Congress asked each State to convene a special convention to ratify (approve) or reject the Constitution of 1787. If nine States would ratify it, this Constitution would become the supreme law of these United States.

The Constitution of 1787 was the object of controvery soon after the people read about it, and read it, in the newspapers. Headlines in the daily press gave notice of sharply divided public opinion:

LEADERS ARGUE ABOUT NEW CONSTITUTION.
OPPOSITION TO THE CONSTITUTION GROWS.
SUPPORTERS URGE NATIONAL UNITY.
OPPONENTS FEAR LOSS OF STATES' RIGHTS.

James Madison expressed anxiety about the fate of the Constitution in a letter to Edmund Randolph (October 21, 1787): "We hear that opinions are various in Virginia [and elsewhere] on the plan of the Convention. . . . The Newspapers in the middle & Northern States begin to teem with controversial publications [articles for and against the Constitution of 1787]. . . . I am far from considering the public mind as fully known or finally settled on the subject."

Supporters of the Constitution of 1787, such as James Madison and George Washington, called themselves Federalists. Their opponents, such as Elbridge Gerry and George Mason, were called Anti-Federalists. What were the Anti-Federalists' objections to the Constitution of 1787?

Gerry's Objections to the Constitution

There were many Anti-Federalists with various objections to the Constitution of 1787. Some opposed the new frame of government because they wanted to retain the Articles of Confederation without changes. Others wanted merely to revise the Articles, but not to throw them out in favor of another kind of government. Finally, many Anti-Federalists, such as Elbridge Gerry of Massachusetts, were willing to accept the new Constitution if certain changes were made in it. But they opposed the document signed on September 17 in Philadelphia. *Gerry wrote the following objections to the Constitution of 1787.*

To the Massachusetts General Court
From Elbridge Gerry
October 18, 1787

. . . To this system [Constitution of 1787] I gave my dissent. . . .

It was painful for me, on a subject of such national importance, to differ from the respectable members who signed the constitution: But conceiving as I did, that the liberties of America were not secured by the system, it was my duty to oppose it.

My principal objections to the plan, are, that there is no adequate provision for a representation of the people . . . that some of the powers of the Legislature are ambiguous, and others are indefinite and dangerous [because they might be expanded and endanger liberty]—that the Executive is blended with and will have an undue influence over the Legislature [the people are represented most directly in the Legislature, so it should be the dominant branch]—that the judicial department will be oppressive [because the judges are not accountable to the people] . . . and that the system is without the security [protection for the people] of a bill of rights. . . .

The Constitution proposed has few, if any *federal* features, but is rather a system of *national* government [the rights and powers of States are diminished greatly]. . . .

The question on this plan [to accept or reject it] involves others of the highest importance. . . .

Whether the several State Governments shall be so altered, as in effect to be dissolved? . . . Whether in lieu of the *federal* and *State Governments*, the *national* Constitution now proposed shall be substituted [ratified] without amendment? Never perhaps were a people called on to decide a question of greater magnitude. Should the citizens of America adopt the plan as it now stands, their liberties may be lost: Or should they reject it altogether Anarchy may ensue. . . .

I shall only add, that as the welfare of the Union requires a better Constitution than the [Articles of] Confederation, I shall think it my duty as a citizen of Massachusetts, to support that which shall be finally adopted. . . .

Which of the following statements are examples of Elbridge Gerry's reasons for opposing the Constitution of 1787? Support your answer with evidence from Gerry's letter to the General Court [legislature] of Massachusetts.

_____ 1. The new Constitution creates a national government that greatly diminishes powers and rights of the States.
_____ 2. It grants too little power to the executive branch.
_____ 3. It gives too much power to the legislative branch.
_____ 4. It gives too little power to the judicial branch.
_____ 5. It lacks a Bill of Rights to protect certain basic liberties of the people.
_____ 6. It gives too much power to some States and not enough to others.
_____ 7. It has too many federal features.

Objections of Brutus

In a letter to Edmund Randolph (October 21,1787), James Madison noted a new and able opponent of the Constitution, who had written an impressive editorial in the *New York Journal* (October 18, 1787). This Anti-Federalist signed his article with a pen-name, Brutus, thereby disguising his identity (Brutus was a defender of the ancient Roman Republic against the imperial designs of Julius Caesar). Most scholars today believe that Brutus was Robert Yates, a delegate to the Federal Convention from New York who left the meeting in protest against its work.

Madison wrote that the newspapers were printing many articles against the new Constitution. He said:

> The attacks seem to be principally levelled against the organization of the government, and the omission of provisions contended for in favor of the Press & Juries [and other parts of a complete Bill of Rights to protect liberties of the people against a powerful government]. A new Combatant however with considerable address and plausibility [persuasive skills], strikes at the foundation [of the Constitution]. He [Brutus] represents [describes] the situation of the U.S. to be such as to render any Govt. improper & impracticable which forms the States into one nation & is to operate directly on the people. [Brutus argued that the United States could never be governed properly by a national or consolidated government that greatly diminished the powers and rights of the State governments.] Judging from the Newspapers one would suppose that the adversaries were the most numerous & the most in earnest.

Madison was anxious about the growing opposition to ratification and seemed to fear the skills of Brutus, whose ideas are stated below, in an edited excerpt from the first in a series of newspaper articles against the Constitution.

Essay I (Brutus)

18 October 1787
To the Citizens of the State of New York.

. . . The . . . question . . . is whether . . . the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial [with little power for the State governments]?

This enquiry is important, because, although the government reported by the convention [Constitution of 1787] does not go to a perfect and entire consolidation [unitary national government] . . . it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontrollable power, legislative, executive, and judicial, with respect to every object to which it extends. . . .

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the [people], expressed in any manner they may agree upon; the latter by the will of one, or a few. . . . Now, in a large extended country [like the U.S.], it is impossible to have a representation [of the people] to declare [reflect] the minds of the people, without having it so numerous and un-

wieldy, as to be [unable to function effectively]. . . .

In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves and oppressing them. . . .

. . . [A] free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted. . . .

Brutus

Answer the following questions about Brutus' objections to the Constitution of 1787. Refer to the document to support and explain your answers.

1. Which of the items below is an accurate statement of Brutus' position in his essay of October 18, 1787? More than one statement may be a correct answer.

_____ a. The Constitution establishes a pure federal republic.

_____ b. The Constitution equally divides power between the general government and the State governments.

_____ c. The powers of government are too heavily weighted in favor of the general government and against the State governments.

_____ d. A free government is based on majority rule of the people, which cannot be managed in a large republic of the type proposed by the Constitution of 1787.

_____ e. In a large, consolidated republic, such as the one established by the Constitution, there are insufficient limits on the powers of government officials.

2. What are the similarities in the ideas of Brutus (probably Robert Yates) and Elbridge Gerry about the Constitution of 1787? (State at least two similarities.)

Madison's Report to Jefferson

James Madison kept his friend Thomas Jefferson informed about events in the United States. Jefferson was in Paris, where he represented the United States to the government of France. In the following letter, Madison told Jefferson about the ratification debate.

James Madison to Thomas Jefferson
October 24, 1787

. . . It was generally agreed [at the Federal Convention] that the objects of the Union could not be secured by any system founded on the principle of a confederation of sovereign States. . . .

Hence was embraced the alternative of a Government which instead of operating on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.

The ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy [amount of power in government so that it can carry out tasks the people expect of it] with the essential characters of Republican Government [limits on power to protect the liberties of the people] 2. to draw a line of demarkation which would give to the General Government [of the United States] every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. . . .

It will not escape you that three names only from Virginia are subscribed [signed] to the Act [Constitution]. Mr. Wythe did not return after the death of his lady. Dr. McClurg left the Convention some time before the adjournment. The Governor [Edmund Randolph] and Col. Mason refused to be parties to it. Mr. Gerry was the only other member who refused. The objections of the Governor turn principally on the latitude of the general powers. . . . He was not [unyielding] in his opposition. . . . Col. Mason left Philadelphia in an exceeding ill humour indeed. . . . He returned to Virginia with a fixed disposition to prevent the adoption of the plan if possible. He considers the want of a Bill of Rights as a fatal objection. His other objections [pertain] to the powers of the Judiciary . . . to the smallness of the number of Representatives . . . and most of all probably to the power [granted to Congress] of regulating trade by a majority only of each House. . . .

The final reception which will be given by the people at large to the proposed System cannot yet be decided. . . .

Answer the following questions about the contents of Madison's letter of October 24, 1787 to Thomas Jefferson.

1. Which of the following items (a-e) accurately describe Madison's views on the Constitution of 1787 and the ratification debate? One or more of the following statements may be correct. Be prepared to support your answers with evidence from the document.

_____ a. The Constitution of 1787 would not basically change the relationships between the government of the United States and the thirteen State governments.

_____ b. Delegates at the Federal Convention tried to create a Constitution that would balance strong powers in the government and place strict limitations on those powers.

_____ c. There was very little doubt that the Constitution would be easily ratified.

_____ d. George Mason was identified as a strong supporter of the Constitution.

_____ e. Edmund Randolph was the only member of the Virginia delegation to the Federal Convention who did not sign the Constitution.

2. Compare Madison's views on the Constitution of 1787 as revealed in his letter to Thomas Jefferson with the views of Elbridge Gerry and Brutus. (a) What is one difference between Madison and Gerry? (b) What is one difference between Madison and Brutus?

Federalist and Anti-Federalist Ideas

Both Federalists and Anti-Federalists had many ideas in common about what a constitutional government should be. For example, both favored government limited by the higher law of a constitution, and both opposed government that was not accountable to the people who lived under it. The Federalists and Anti-Federalists wanted a republican form of government—one by elected representatives of the people. Both wanted some type of federalism—division of powers between a central government and several state governments. Finally, both Federalists and Anti-Federalists wanted a free government; that is, a government that would be responsive to the will of the people and that would protect the rights and liberties of individuals.

However, the Federalists and Anti-Federalists differed about how to design a government that would be limited, republican, federal, and free. Indeed, the Federalists and Anti-Federalists had different ideas about the meaning of core principles, such as limited government, republican government, federal government, and free government. These differences are elaborated upon in subsequent parts of this volume.

Can you identify Federalist and Anti-Federalist statements in the list below about core principles of constitutional government? Write the letter "F" in the space next to each statement that fits the Federalist position. Write the letters "AF" in the space next to each statement that expresses the Anti-Federalist position. Write the letter "X" in the space next to each statement that fits neither the Federalist nor the Anti-Federalist position. Be prepared to provide reasons and evidence for your answers.

_____ 1. States are the characteristics and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

_____ 2. There is no Declaration of Rights; and the Laws of the General Government being paramount to the Laws and Constitutions of the several States, the Declaration of Rights in the separate States are no Security.

_____ 3. [T]he objects of the Union could not be secured by any system founded on the principle of a confederation of sovereign States.

_____ 4. We must crush . . . the enemies of the Republic, or perish with her. And in this situation, the first maxim of our policy should be to conduct the people by reason, and the enemies of the people by terror. . . . The government of a revolution is the despotism of liberty against tyranny.

Lesson 2: Teaching Plan
Publius Enters the Debate on the Constitution

Objectives

Students are expected to
1) identify *The Federalist* in the context of the debate on ratification of the Constitution;
2) identify the authors of *The Federalist*: Hamilton, Madison, Jay and their contributions to this work;
3) explain the purposes of the authors in writing *The Federalist*;
4) interpret main ideas in *The Federalist* 1;
5) evaluate ideas in *The Federalist* 1.

Estimation of Time Needed to Complete this Lesson: No More than Two Classroom Periods.

Opening the Lesson

Bring a copy of *The Federalist* to class and show it to students. Use the book as a prop to raise questions and arouse curiosity about origins, purposes, and significance of *The Federalist* and to introduce main points and objectives of this lesson. Ask students to reveal what they know about *The Federalist* in advance of their study of this lesson.

Have students read the parts of the lesson, which treat the origin, authorship, and purposes of *The Federalist*. Require them to respond to the exercises in this portion of the lesson in preparation for classroom discussion. Focus their attention on the edited excerpt from *The Federalist* 1, which presents Hamilton's views of the purposes of this work.

Developing the Lesson

Conduct a classroom discussion on the preceding assignment. Begin with the first exercise. Correct statements about the origins and authorship of *The Federalist* in the exercise are numbers 4, 7, 8, 10. Require students to explain what is incorrect about the other statements and to report how they should be changed in order to make them correct.

Have students turn to the exercise on *The Federalist* 1. Answers to items 1-3 will vary, but must be justified by references to the document. Correct answers to item 4 are statements b, c, d, and e. Require students to support their answers with evidence from the document.

Encourage interaction among students by calling upon one student to provide an answer to an item in an exercise and by calling upon other students to evaluate the first student's answer. Encourage students to challenge one another to give reasons for their answers and to use evidence from primary sources to support their answers.

Assign the remainder of the lesson and require students to complete the exercise that appears at the end of the lesson. Divide the class into two groups: group one has the easier assignment of writing a summary of the purposes of *The Federalist* and group two has the more difficult assignment of writing a brief editorial on this document.

Concluding the Lesson

Begin by calling on one student in group one to read his/her summary of the purposes of *The Federalist*. Then call upon other students to evaluate the summary. Repeat this procedure several times in order to involve several students in the process of reporting and evaluating.

Conduct a concluding discussion on item 2. Call upon one student in group two to read his/her editorial. Assign three students in group two to serve as a formal reaction panel. Advise reactors that they might react with supportive statements, criticisms, alternative ideas, and/or questions. Allow the student who presented his/her editorial to respond to the reaction panel. Advise this student that he/she might agree or disagree with the reactors. Then call upon others in the class to address questions and comments to the first speaker and to the reaction panelists. Members of the class might also be supportive or critical of the first speaker or the panelists.

You might want to collect all of the papers and evaluate them for your students.

Lesson 2
Publius Enters the Debate on the Constitution

The Origin of Publius and *The Federalist*

SEPTEMBER 27, 1787 (New York, NY): A scathing attack on the proposed Constitution—the work of the Federal Convention of Philadelphia—was printed in the *New York Journal*. It was signed with a pseudonym, Cato.

Alexander Hamilton read Cato's article with alarm and anger. Hamilton had participated in the Federal Convention, where he was one of three delegates from New York. He was disappointed, however, in the Constitution produced by the Convention because he wanted a much stronger national government than it provided. Nonetheless, Hamilton strongly preferred the proposed Constitution of 1787 to the existing government under the Articles of Confederation, and was among the thirty-nine delegates who had signed it on September 17, 1787.

Hamilton resolved to campaign for ratification of the Constitution against strong opposition to it, which included his fellow delegates from New York to the Federal Convention, John Lansing and Robert Yates, and the powerful governor of New York, George Clinton. Hamilton suspected that Lansing, Yates, and Clinton were the authors of Cato's article against the Constitution.

Hamilton was not the only New Yorker to be upset by Cato's article. Arguments about it flared in the taverns, clubhouses, and streetcorners of the city. Hamilton wrote to George Washington: "The constitution proposed has in this state warm friends and warm enemies." He planned a series of essays to refute these "enemies" and influenced John Jay and James Madison to join him. They were the authors of papers that became *The Federalist*—a collection of eighty-five essays in support of the Constitution of 1787. Each paper was signed with a pseudonym, Publius, after Publius Valerius—a great defender of the ancient Roman Republic. Thus was born a work that Thomas Jefferson called "the best commentary on the principles of government which ever was written."

Most of Publius' papers were printed originally in New York City newspapers. In 1788 they were published together as a two-volume book, *The Federalist*.

Authors of *The Federalist*

John Jay, at forty-two, was the oldest of the three authors of *The Federalist*. A New Yorker, he had served his state and nation as principal author of the state constitution, member of a delegation that negotiated the Treaty of Paris (1783) to officially end the War of Independence, and head of foreign affairs under the Articles of Confederation. In 1789, Jay became the first Chief Justice of the United States.

James Madison of Virginia was thirty-six years old in 1787 and had been among the most prominent leaders in the Federal Convention. Later, he was called "father of the Constitution" because of the great part he played in shaping the Constitution. In 1789, Madison was a Representative from Virginia to the first session of Congress under the Constitution. He proposed amendments that became the basis for the Federal Bill of Rights. Later he was Secretary of State under President Thomas Jefferson and succeeded Jefferson as President of the United States.

Alexander Hamilton of New York, originator of the project to write *The Federalist*, was the youngest member of the team, thirty-two years old in 1787. During the War of Independence, he was an assistant to General Washington and rose to the rank of lieutenant colonel. He participated in the decisive battle of Yorktown. Later, Hamilton and Madison were primary leaders in bringing about the Federal Convention in 1787. He served as Secretary of the Treasury under President George Washington and created a sound financial foundation for the United States.

Hamilton, major author of *The Federalist*, wrote fifty-one of the eighty-five papers (1, 6-9, 11-13, 15-17, 21-36, 59-61, and 65-85). Madison wrote twenty-nine essays (10, 14, 18-20. 37-58, and 62-63). Illness forced John Jay to withdraw from the project, and he wrote only five essays (2-5 and 64).

Respond to the following items about the origin and authors of *The Federalist*. Make a checkmark in the space next to each correct statement in the list below. Be prepared to justify or give reasons for selection of each correct statement.

_____ 1. Cato was the pseudonym of the authors of *The Federalist*.

_____ 2. *The Federalist* was written to convince delegates to the Federal Convention to revise the Articles of Confederation.

_____ 3. The major author of *The Federalist* was John Jay.

_____ 4. Authors of *The Federalist* agreed that the United States needed a new government that would be stronger than the central government under the Articles of Confederation.

_____ 5. Alexander Hamilton used the writings of Publius Valerius, a defender of the ancient Roman Republic, to support the Constitution of 1787.

_____ 6. *The Federalist* was the name of a leading New York newspaper that supported ratification of the Constitution.

_____ 7. James Madison was a co-author of *The Federalist*.

_____ 8. Less than two weeks after the end of the Federal Convention in Philadelphia, opposition against the Constitution of 1787 erupted in New York.

_____ 9. James Madison wrote fifty essays in *The Federalist*.

_____ 10. There were three authors of *The Federalist*.

Purposes of *The Federalist*

The first objective of *The Federalist* was to persuade the people of New York to ratify the Constitution; each paper was addressed "To the People of the State of New York" and published first in a New York newspaper. A second objective was to influence Americans in all thirteen states to approve the Constitution. *The Federalist* was primarily a work of advocacy.

The authors submerged political differences in their pursuit of a common goal—ratification of the Constitution. Madison and Jay agreed with Hamilton: [The Constitution] "is a compromise of . . . many dissimilar interests and inclinations." It did not exactly reflect the ideas on government of any one of the coauthors, but they agreed that it was far superior to the Articles of Confederation.

In 1788, Madison noted variations in ideas of the three authors of *The Federalist*: "The authors are not mutually answerable for all the ideas of each other." After ratification of the Constitution and formation of the federal government, Madison joined Thomas Jefferson in political clashes with Hamilton that led to the establishment of rival political parties: Federalists (Hamilton) versus Republicans (Jefferson/Madison). These conflicts, however, lay ahead. In 1787-88, Madison and Hamilton were a formidable team in defense of the Constitution.

Hamilton, Madison, and Jay readily agreed on the name of their projected series of essays, *The Federalist*. With this name, they scored a public relations victory against their opponents, who accepted by default the label of Anti-Federalists, a negative name that suggested only opposition, with no constructive ideas to improve the government.

There was irony here, because the opponents of Hamilton, Madison, and Jay considered themselves the "true federalists" (supporters of strong states' rights and powers in a union of states to make a federal system of government). By contrast, these "Anti-Federalists" viewed Hamilton and his allies as "consolidationists" (nationalists who would submerge states' rights and powers in favor of a supreme central government). Thus, early in the contest over ratification of the Constitution, the contending sides became known as Federalists (for ratification) and Anti-Federalists (against ratification).

The First Essay of Publius

In *The Federalist* 1, published in the *Independent Journal* of New York city (October 27, 1787), Hamilton introduced New Yorkers to the political ideas of Publius. Hamilton as Publius discussed the overriding purposes of his side in the debate on the Constitution. (See the edited excerpt from *The Federalist*.)

The Federalist No. 1 (Hamilton)

October 27, 1787
To the People of the State of New York:

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks of its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind. . . .

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the*

UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least equally energetic [powerful] *with the one proposed, to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government* . . . and lastly, *The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.*

. . . I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to your attention. . . .

. . . [W]e already hear it whispered in the private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system [national government], and that we must of necessity resort to separate confederacies of distinct portions of the whole. . . . [but] nothing can be more evident to those who are able to take an enlarged view of the subject than the alternative of an adoption of the new Constitution or a dismemberment of the Union. . . .

Publius

Answer the questions below about The Federalist 1. Be ready to explain your answers; use evidence in *The Federalist* 1 to support your answers.

1. What was the "crisis at which we are arrived" that is mentioned in the first paragraph of *The Federalist*?
2. Why, according to Publius, would "a wrong election of the part we shall act . . . deserve to be considered as the general misfortune of mankind"?
3. What advice did Publius have for Americans about the decision that should be made in response to the crisis they faced in 1787?
4. Which of the following statements agree with *The Federalist* 1? Make a checkmark in the space next to each statement that agrees with Publius; give reasons for your answers that are based on contents of the document.

_____ a. The government of the United States, under the Articles of Confederation, is tyrannical.

_____ b. The Constitution of 1787 will contribute more to the preservation of liberty than will the Articles of Confederation.

_____ c. If the Constitution of 1787 is not ratified, then the United States will not endure.

_____ d. Americans have a rare opportunity to decide for themselves upon the form of government they will have.

_____ e. An important responsibility of government is protection of property rights of individuals.

The Achievement of Publius

James Madison was in New York City when the first *Federalist* paper was published. He observed reactions of political friends and foes as eight more *Federalist* papers were written and published in rapid succession, from October 31 to November 21. Papers numbers 2-5 were written by John Jay and numbers 6-9 by Hamilton. On November 18, 1787, Madison wrote about *The Federalist* in a letter to George Washington:

> I enclose herewith the 7 first numbers of *The Federalist*, a paper addressed to the people of this State [New York]. They relate entirely to the importance of the Union. If the whole plan should be executed, it will present to the public a full discussion of the merits of the proposed Constitution in all its relations. . . . perhaps the papers may be put into the hand of some of your confidential correspondents at Richmond [Virginia] who would have them reprinted there. I will not conceal from you that I am likely to have [a great involvement in authorship of *The Federalist*]. You will recognize one of the pens concerned in the task. There are three in the whole.

As revealed in his letter to George Washington, Madison was ready to write as Publius, the Federalist. His first paper, the classic No. 10, was printed, November 22, 1787.

And so, the issue was presented to the people: how best to achieve a free government for themselves and their United States. Would this be done by accepting the Constitution of 1787? The Anti-Federalists answered "no" and did their best to convince Americans to reject the Constitution, or at least to change it in favor of their ideas. The Federalists answered "yes" and campaigned for ratification of the Constitution of 1787.

The Federalists won the debate of 1787: the Constitution was ratified. In a way, the Anti-Federalists won too. Their ideas were widely circulated and influenced the addition in 1791 of a Bill of Rights to the Constitution (Amendments I-X). And Publius, in *The Federalist*, created a classic work that has served from then until now as a guide to the theory and practice of constitutional government.

Respond to the following items about The Federalist.

1. Write a brief description (no more than 250 words) about the purposes of *The Federalist* as revealed in paper No. 1 and in Madison's letter to George Washington.

2. Suppose that you are a publisher of a newspaper in New York City in October 1787. After publication of the first *Federalist Paper* in a rival newspaper, you decide that you should write an editorial about it for publication in your own newspaper. You begin to think carefully about the stand that you will take—for or against *The Federalist* 1. What should you say in this brief editorial about the ideas of Publius? Your assignment is to write a brief opinion piece (no more than 500 words) in response to *The Federalist* 1.

Lesson Set II
Majority Rule and Minority Rights in a Free Government

Federalists and Anti-Federalists agreed about the overriding importance of **free government**: one that would be based on the will and the rights of the people living under the government's authority. However, the Federalists and their Anti-Federalist opponents had different conceptions of a free government, alternative views of how to make a constitution for an effective government that would enable the people to enjoy their essential rights and freedoms.

Federalists and Anti-Federalists agreed that a free government is limited by the higher law of a constitution, which protects the rights and freedoms of individuals. But how limited should it be? At what point, and under what circumstances, do constitutional limits on a government's powers prevent it from acting for the public good or for the private rights of individuals? James Madison and other Federalists in the ratification debate responded differently from their Anti-Federalist foes.

Federalists and Anti-Federalists agreed that a free government is a **republic**; that is, government based on rule by the majority of the people expressed through their elected representatives in government. But how should this majority rule be expressed under a constitution that sets legal limits on this rule? At what point, and under what circumstances, does majority rule threaten the rights and liberty of minority groups or individuals? Conversely, at what point, and under what circumstances, do constitutional limits on the majority violate or undermine the essential element of a republic—popular sovereignty: government of, by, and for the people. The answers of Federalists to these questions differed significantly from those of their Anti-Federalist opponents.

This *Lesson Set* treats the ideas of James Madison in *The Federalist* and other writings on majority rule with minority rights in a free government, a republic. The Anti-Federalist position is represented by selections from *The Essays of Brutus* (probably Robert Yates of New York).

This *Lesson Set* includes two *Teaching Plans* and accompanying *Lessons* for students: (a) No. 3: Madison on Majority Rule and Minority Rights and (b) No. 4: Brutus, the Anti-Federalist, on Free Government.

Lesson 3: Teaching Plan
Madison on Majority Rule and Minority Rights

Objectives

Students are expected to

1) identify and comprehend Madison's ideas on majority rule, minority rights, free government, popular sovereignty, representation in government, and the republican form of government in *The Federalist* 10 and 51;
2) examine and explain ideas on majority rule, minority rights, free government, and republican government in *The Federalist* 10 and 51 and in a letter from Madison to Jefferson, October 17, 1788;
3) evaluate Madison's position on free government.

Estimation of Time Needed to Complete This Lesson: No More Than Two Classroom Periods.

Opening the Lesson

Write these words on the chalkboard: "majority rule" and "minority rights." Ask students to define these words. Ask them to express agreement or disagreement with these ideas. Presumably everyone will agree with the value of majority rule and minority rights. At this point, ask whether or not these ideas have ever been in conflict in the lives of people in the United States. Have students provide examples of these conflicts, especially examples of the majority abusing the rights of minorities. Then say that James Madison argued that in a government of, by, and for the people, there would be the ever-present threat of tyranny of the majority. Conclude this discussion by asking students to speculate about remedies to majoritarian tyranny in the organization and operation of a government.

Use this discussion to lead students into reading the introduction to this lesson. Then tell students that they will examine the ideas of James Madison on majority rule and minority rights in a free government in three documents: *The Federalist* 10, *The Federalist* 51, and a letter from Madison to Jefferson, October 17, 1788. Ask students to respond to the questions that follow each document in preparation for a class discussion.

Developing the Lesson

Conduct a discussion of Madison's ideas in the excerpts from *The Federalist* 10 and 51 and the letter to Jefferson. Require students to support their answers to the assigned questions with evidence from specific documents. Encourage students to ask their classmates to justify answers with references to information in the primary sources.

Assign the five questions at the end of the lesson. Ask students to prepare answers for a concluding classroom discussion on this lesson.

Concluding the Lesson

Conduct a concluding classroom discussion. Once again, require students to justify answers with references to the primary sources in this lesson.

Answers to questions 1 - 4 will vary. The correct answers to question 5 are items b and e. Use two or three of the provocative items in question 5 as foils for discussion. For example, you might ask students to take a position—for or against—statements a, c, and e. They would be deciding whether or not to agree with Madison on these statements.

Emphasize potential conflicts in a free government between majority rule and minority rights. Point out that these conflicts and the issues they raise are unavoidable under conditions of freedom. In addition, emphasize that in a free government, citizens persistently seek to balance majority rule and minority rights. They accept the challenge of combining and balancing majority rule and minority rights. They avoid extreme emphasis on *either* majority rule *or* minority rights.

NOTE: In addition to *The Federalist* 10 and 51, the following numbers also treat the ideas of majority rule with minority rights in a free government: 22 (Hamilton); 39 and 58 (Madison).

Lesson 3
Madison on Majority Rule and Minority Rights

Madison's Position on Free Government

James Madison believed that a **free government** is based on the popular majority; but it is limited by the higher law of the Constitution to protect the rights and liberties of individuals in the minority. He supported popular participation in government, but only as a means to the protection of the individual's life, liberty, and property, and never as an end in itself.

Popular sovereignty in a **republic**, government by the people, implies majority rule. In a republic (a popular government), people elect representatives in government by majority vote, and these representatives of the people make laws by majority vote. However, a popular or republican form of government can pose dangers to the rights and freedoms of individuals. Majorities might oppress minorities who disagree with them, unless effective limits are placed on majority rule. Thus, James Madison and other supporters of the Federalist cause in 1787-1788 believed that constitutional limits should restrict majority rule, but only for the higher purpose of securing the rights and liberties of individuals in the minority.

Madison equally opposed the absolutism of a monarch (the tyranny of one), of an aristocracy or oligarchy (tyranny of the few over the many), or of a popular majority (tyranny of the many over the few). Madison argued that the greatest threat to liberty in a republic (government by representatives of the people) would come from unrestrained majority rule.

At the Federal Convention in Philadelphia Madison stated his concern about the possible tyranny of the majority, when he said that the purposes of the Constitution were, first, "to protect the people against their rulers [and] secondly, to protect the people against the transient impressions [toward tyranny] into which they themselves might be led." Madison warned that reliance on popular participation in government to prevent tyranny would fail; because popular majorities that resulted from direct participation of the people in government could have the power, if not limited by a well-structured constitution, to trample the rights and freedoms of minorities.

The Federalist 10 and 51

Madison memorably discussed majority rule and minority rights in a free and republican form of government in *The Federalist* 10 and 51. Number 10, was printed for the first time on November 22, 1787 in *The Daily Advertiser* of New York City. It was the first of 29 papers by Madison for *The Federalist*. Read the following excerpts from these two essays and respond to the questions that come after them.

The Federalist No. 10 (Madison)

November 22, 1787
To the People of the State of New York:

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. . . .

By a faction I understand [mean] a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated [motivated to action] by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. . . .

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction [an overbearing majority], and at the same time to preserve the spirit and the form of popular government [majority rule], is then the great object to which our inquiries are directed. . . .

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. . . .

From this view of the subject it may be concluded that a pure [direct] democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction [majoritarian tyranny]. A common passion or interest will, in almost every case, be felt by a majority of the whole . . . and there is nothing to check the inducements to sacrifice [oppress] the weaker party or an obnoxious individual. Hence it is that such democracies [with unlimited majority rule] have ever been spectacles of turbulence [disorder] and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. . . .

The two great points of difference between a [direct and unlimited] democracy and a republic are: first, the delegation of the government, in the latter [republic], to a small number of citizens elected by the rest; secondly, the greater number of citizens and greater sphere of country over which the latter [republic] may be extended.

The effect of the first difference is . . . to refine and enlarge the public views by passing them through the medium of a chosen body of citizens [elected representatives of the people], whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. . . .

[The effect of the second difference], the greater number of citizens and extent of territory which may be brought within . . . republican [government] . . . renders factious combinations less to be dreaded [in a large republic]. The smaller the society, the fewer probably will be the distinct parties and interests [groups with a common aim] composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller . . . the compass [area] within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere [area], and you take in a greater variety of parties and interest; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other. . . .

Hence, it clearly appears that the same advantage which a republic has over a [direct] democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. . . . Here again the extent [large territory] of the Union gives it the most palpable advantage [in limiting the power of majorities to oppress unpopular persons]. . . .

In the extent and proper structure of the Union [a large federal republic] . . . we behold a republican remedy for the diseases most incident to republican government. . . .

Publius

Answer the questions below about The Federalist 10. Prepare yourself to explain and justify your answers with ideas and evidence drawn from the preceding primary source, *The Federalist* 10.

1. What are the differences between a republic and a pure or direct democracy?
2. What are the dangers of a pure or direct democracy?
3. How does a republic overcome weaknesses associated with pure or direct democracy?
4. Does Madison's concept of republican government include both majority rule and minority rights?
5. Is Madison's concept of republican government compatible with today's concept of representative democracy?

***The Federalist* No. 51 (Madison)**

February 6, 1788
To the People of the State of New York:

. . . It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by [including] in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority [monarchy or dictatorship]. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights . . . consists . . . in the multiplicity of interests. . . . Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. . . . In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. . . .

Publius

Answer the questions below about The Federalist 51. Use ideas and evidence from the preceding document to explain and justify your answers.

1. Madison says (*The Federalist* 51): "It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part." (a) What does this statement have to do with majority rule and minority rights in a free government? (b) Do you agree with Madison's statement? Why?
2. Does Madison believe that majority rule could destroy minority rights? Why?
3. What are Madison's ideas about how to guard against the destruction of minority rights?
4. Does Madison value both majority rule and minority rights?

Madison Writes to Jefferson on Majoritarian Tyranny

After the Constitution of 1787 was ratified, James Madison expressed his thoughts about it in letters to his close friend, Thomas Jefferson, who was serving as the ambassador from the United States to the government of France. In the letter following, Madison expressed fears of a tyrannical majority in a republican government. He assumed that the Constitution of 1787 provided means to control or prevent majoritarian tyranny. And he agreed with Jefferson that addition of a Bill of Rights to the Constitution would provide additional protection for the rights of individuals against the threat of majoritarian tyranny.

James Madison to Thomas Jefferson
October 17, 1788

. . . Wherever the real power in a Government lies, there is the danger of oppression. In our Governments, the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the major number [majority] of the constituents. This is a truth of great importance, but not yet sufficiently attended to. . . . Whenever there is an interest and power to do wrong, wrong will generally be done, and not less readily by [a majority of the people] than by a . . . prince. . . .

. . . [I]n a popular Government, the political and physical power may be considered as vested in the same hands, that is in a majority of the people, and consequently the tyrannical will of the sovereign is not to be controlled by the dread of an appeal to any other force within the community. What use then it may be asked can a bill of rights serve in popular Governments? I answer the two following. . . . 1. the political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho' it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter sources; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. . . .

. . . It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power; and that the line which divides these extremes should be so inaccurately defined by experience. . . .

. . . Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power, as with us, is in the many not in the few, the danger can not be very great that the few will be thus favored. It is much more to be dreaded that the few will be unnecessarily sacrificed to the many. . . .

Concluding Activities

Respond to the following items about three primary sources in this lesson: The Federalist 10, The Federalist 51, and the letter from Madison to Jefferson. Support or justify your answers with ideas and evidence from these three primary sources. Be specific in pointing to the particular places in one or more of these three documents to provide evidence in support of your responses to the items.

1. What is the greatest threat to individual rights and liberty in a republican government? Why?

2. According to Madison, how can each of the following constitutional provisions protect the rights of individuals in the minority from tyranny of the majority: (a) a bill of rights (b) a republican government in a large territory?

3. According to Madison, what is a faction?

4. Why is a pure or direct democracy an inadequate means of controlling the negative effects of factions?

5. Which of the following statements agree with ideas presented in *The Federalist* 10, *The Federalist* 51, and Madison's letter to Jefferson (October 17, 1788)? Support and explain your choices by referring to specific parts of the three primary sources in this lesson. Make a checkmark in the spaces next to the correct statements.

_____ a. The best protection against tyranny is direct and active participation in government by the vast majority of the people.

_____ b. A free government is based on popular sovereignty.

_____ c. In a free government, the rights and liberties of groups should have priority over the rights and liberties of individuals.

_____ d. The best protection against tyranny of the majority is the good will of the rulers toward the rights and liberties of minority groups.

_____ e. Social diversity in a large republic contributes importantly to protection of personal rights and liberties.

_____ f. In a free government, there is unlimited rule by the majority.

_____ g. In a free government, minorities have unlimited freedoms and rights.

Lesson 4: Teaching Plan
Brutus, The Anti-Federalist, on Free Government

Objectives

Students are expected to

1) identify and comprehend an Anti-Federalist position on free government, a republic;
2) examine, explain, and evaluate ideas and information about a free and republican form of government in essays of Brutus, an Anti-Federalist writer;
3) compare and contrast the ideas of Brutus with the ideas of Madison (in Lesson 3) on free government;
4) select and defend a position, pro or con, on the ideas of Brutus and Madison about free government and the republican form of government in the United States.

Estimation of Time Needed to Complete This Lesson: No More Than Three Classroom Periods.

Opening the Lesson

Ask students to read the introduction to this lesson. Identify Brutus' Anti-Federalist writings as an alternative to the Federalist position of James Madison in Lesson 3. Examine each of the characteristics in Brutus' conception of free government, which are listed in the introduction.

Invite students to raise questions or to make comments about the meaning and worth of the characteristics in Brutus' conception of free government. Then ask students to read the excerpts from *Essay I* and *Essay IV* by Brutus, which reveal his position on free government, as it was presented to Americans during the ratification debate of 1787-1788. Require students to respond to the questions that follow each document in preparation for a classroom discussion.

Developing the Lesson

Conduct a discussion on *Essay I* and *Essay IV* by Brutus. Require students to support and justify their answers with evidence drawn from specific parts of the primary sources in this lesson. Answers to items 1-4, at the end of *Essay I*, will vary, but must be justified with evidence from the appropriate primary source. Answers to the activity at the end of Essay IV are as follows: 1. B-M, 2. B, 3. B, 4. M, 5. X, 6. B. Require students to justify answers with references to specific parts of the relevant primary sources.

Concluding the Lesson

Ask students to read the final section of the lesson: *A Federalist/Anti-Federalist Forum on Free Government*. Focus attention on the core question about the essential characteristics of free government in the alternative positions of Brutus and Madison.

Divide the class into two groups (A-B). Assign Question 1 (Brutus' position) to Group A and Question 2 (Madison's position) to Group B. Students might be allowed to select themselves into either Group A or Group B on the basis of their preferences for the ideas of Brutus or Madison. Group A should refer to ideas of Brutus in Lesson 4 and Group B should use Madison's ideas in Lesson 3. Group A will advocate the position of Brutus and Group B will advocate the position of Madison.

Each group should select a chairperson who will manage the group's preparation of its assigned task. The chair is also responsible for organizing the group's presentation to a forum, or full-class meeting. Groups A and B will prepare to make formal 15-minute presentations to the forum. Full-class discussion will follow the presentations.

The chair determines which members of the group will take part in the presentation of the group's position and selects the order in which group members speak. Ideally, all members of the group will participate in the preparation and discussion of the group's assigned task during the day preceding the forum. However, only four or five group members will take part in the formal presentation of the group's position. Suppose Group A selects five members to present the group's position in the forum. Each person might report about one major strong point in Brutus' position.

The forum, full-class meeting, can be conducted within one typical classroom period. The teacher calls the forum to order. Next the teacher/moderator asks the chairperson of Group A to introduce the group members, who in turn make the group's presentation on strengths of Brutus' position on free government. Then the teacher/moderator asks the chairperson for Group B to introduce the group members, who in turn make the group's presentation on strengths of Madison's position on free gov-

ernment. Group presentations are limited to 15 minutes.

Following the formal group presentations, the teacher moderates a full-class discussion about the alternative positions of Brutus and Madison on the essential characteristics of a free government. Participants in this full-class discussion raise questions and criticisms of the two positions of Brutus and Madison. Questions and comments might be directed to persons who participated in the formal presentations. However, this part of the forum also provides an opportunity for other members of Group A and Group B to voice their views in support of or opposition to either of the two positions. The teacher/moderator prevents anyone from dominating the discussion and encourages broad participation in the forum.

Conclude the forum by asking students to record their preferences for either the position of Brutus or the position of Madison. Tally and report results to the class.

Lesson 4
Brutus, the Anti-Federalist, on Free Government

Introduction to Ideas of Brutus

Brutus (pseudonym), a New York Anti-Federalist (probably Robert Yates), warned the American people "that a consolidation of this extensive continent under one government [under the Constitution of 1787] . . . cannot succeed, without a sacrifice of your liberties." Brutus wrote Anti-Federalist arguments against ratification of the Constitution of 1787 in sixteen essays, which were printed in the *New York Journal* from October 18, 1787 to April 10, 1788—the same months when *The Federalist Papers* were also published in New York newspapers.

Brutus' essays countered arguments in *The Federalist*, and from then until now have been judged among the best expressions of the Anti-Federalist position. Brutus argued forcefully that the Constitution of 1787 placed too much emphasis on power in government to achieve order and stability in the society, and that it placed too little emphasis on liberty. Thus, according to Brutus, this Constitution of 1787 did NOT provide for **free government**.

Brutus contended that, in contrast to the Constitution of 1787, a **free government** has these characteristics:

- The government is directly accountable to the people who established it and live under its authority.
- The people choose their representatives, who are directly responsible to them.
- The people express their will in government through elected representatives, who mirror traits and ideas of their constituents; groups and interests in the society are reflected clearly in the government.
- Popular majority rule prevails, because people have ample opportunity and motivation to participate in government as voters and candidates in public elections and as petitioners of representatives.
- The government is directly accountable to the people through frequent elections of officials with short terms of office.
- The larger the territory under the government's authority, the harder it is to have the quantity and quality of representation that reflects the will of the people; so a small republic is better than a large one, and the number of representatives always is large enough to reflect the will of the people.

According to Brutus, the majority will of the people must prevail in a free government. He viewed majority rule as the critical characteristic in government that would guarantee the liberty of all the people, including individuals in the minority. If the majority ruled through representatives in government, who were directly accountable to the people who elected them, then justice and liberty would inevitably be achieved. Brutus and other Anti-Federalists did not view majority faction as the greatest threat in republican government to liberty of the people. By contrast, they held that strict limits on the majority would lead to loss of popular sovereignty and personal liberty. Brutus seemed to agree with the Anti-Federalist governor of New York, George Clinton, who insisted that in a *free government* "the will of the people . . . is law."

Essays I and IV by Brutus

Brutus expressed his position on free government in Essays I and IV. Read the excerpts below from these two essays and answer the questions about this Anti-Federalist position that follow the essays.

Essay I (Brutus)

October 18, 1787
To the Citizens of the State of New York.

. . . In a free republic . . . all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole [the people], expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a

few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy as to be subject in great measure to the inconvenience of a democratic government [one that expresses the will of the majority]. . . .

. . .[A] free republic cannot long subsist over a country of the great extent of these states. . . .

Brutus

Respond to the items below about Brutus' Essay I. Support and justify your responses with evidence from this essay.

1. What is Brutus' definition of a free government?
2. According to Brutus, what is the relationship of the people to their representatives in a free government?
3. Why does Brutus believe that free government is not possible in a large republic?
4. Compare Brutus' definition of free government with Madison's definition of free government. (See Lesson 3 for Madison's position.)

Essay IV (Brutus)

November 29, 1787
To the Citizens of the State of New York.

There can be no free government where the people are not possessed of the power of making the laws by which they are governed, either in their own persons, or by others [representatives] substituted in their stead.

Experience has taught mankind that legislation by representatives is the . . . only practicable mode in which the people of any country can exercise this right, either prudently or beneficially. But then . . . this representation [must be] so constituted as to be capable of understanding the true interests of the society for which it acts, and so disposed as to pursue the good and happiness of the people as its ultimate end. The object of every free government is the public good, and all lesser interests yield to it. . . .

. . . [I]n . . . a good constitution . . . the power is committed to [representatives with] the same feelings . . . and . . . the same objects as the people [have] . . . who transfer to them their authority. There is no possible way to effect this but by an equal, full and fair representation. . . . For without this it cannot be a free government; let the administration of it be good or ill, it still will be a government, not according to the will of the people, but according to the will of a few. . . .

A farther objection against the feebleness of the representation [in the Constitution of 1787] is that it will not possess the confidence of the people. The execution of the laws in a free government must rest on this confidence, and this must be founded on the good opinion they entertain of the framers of the laws. Every government must be supported, either by the people having such an attachment to it . . . or by a force at the command of the government to compel obedience. The latter mode destroys every idea of a free government; for the same force that may be employed to compel obedience to good laws, might, and probably would be used to wrest from the people their constitutional liberties. . . .

If then this government [Constitution of 1787] should not derive support from the good will of the people, it must be executed by force, or not executed at all; either case would lead to the total destruction of liberty. . . .

Brutus

Respond to the following items about Essays I and IV above and about The Federalist 10 and 51 in Lesson 3. Read each of the following statements (1-6) and decide whether or not each one is a correct description or interpretation of Brutus' or Madison's ideas about free government. Write "B" in the spaces next to the statements that agree with Brutus; write "M" next to statements that agree with Madison; write "BM" next to statements that agree with both Brutus and Madison; write "X" next to statements that agree with neither Brutus nor Madison. Support your answers with references to specific parts of Essays I and IV or *The Federalist* 10 and 51.

_____ 1. In a free government, the people exercise influence through their elected representatives in government.

_____ 2. Elected representatives of the people reflect directly the traits and interests of their constituents.

_____ 3. It is unlikely that a free government can be maintained in a large territory.

_____ 4. The greatest threat to free government is unlimited majority rule.

_____ 5. The most important characteristic of a free government is unlimited rights of individuals.

_____ 6. The will of the majority is both necessary and sufficient to protection of the rights and liberty of individuals in the minority.

A Federalist/Anti-Federalist Forum

The different positions of *Brutus* and Madison about free government can be the focal points for a forum—an open discussion about ideas and issues. THE CORE QUESTION FOR THIS FORUM: *What are the essential characteristics of a free government*?

1. What is Brutus' position on this core question?
2. What is Madison's position on this core question?

In responding to these questions, identify the major strengths or weaknesses of each position and organize your answers around these key ideas. These key ideas of each person are the ones you have judged to be the most important strengths or weaknesses in his position on free government.

Decide which person, Brutus, the Anti-Federalist, or Madison, the Federalist, had the stronger position on free government. Select and defend the stronger position in a classroom forum on the concept of free government in the ratification debate of 1787-1788.

Lesson Set III
Federalism and Republicanism

Federalists and Anti-Federalists both wanted federalism—a system of government in which powers are divided between a government of the United States and the several State governments. And they both insisted upon republicanism—government based on the will of the people and accountable to the people. But, they disagreed in their definitions of federalism and republicanism.

The Anti-Federalists had the traditional view: a federal union is made by sovereign states who create a general government for certain limited purposes, such as conduct of foreign affairs and protection against external threats. But the general government is directly accountable to the states that created it, not to the people. The sovereign states of the federal union, the basic units of republican government, are directly accountable to the people. They believed it was impossible to have a true republic in a territory as large as the United States. Only in the smaller areas of the states could the people be properly represented and involved in their government.

By contrast, the Federalists held bold new concepts. In their scheme, the people are creators of both their national and state governments and both levels of government are directly accountable to them. And not only is it possible to have a national republic in a large territory, such as the domain of the United States, it is desirable. Madison believed the liberty and rights of individuals would be more secure in a large republic with a diversity of groups and interests. In such an "extended republic" it would be harder for a single-minded majority to form and oppress unpopular minorities (see *The Federalist* 10 and 51). The federal (national) government would have several significant and far-reaching powers granted only to it; and within its constitutionally sanctioned domain, the federal government would be supreme. The state governments would have many important duties and powers, but they would not be sovereign, as they were under the Articles of Confederation.

This *Lesson Set* examines the conflicting conceptions of federalism and republicanism of the Federalists and Anti-Federalists. And it treats their disagreements about the merits of the Constitution of 1787 as a frame of government that would provide a desirable federal republic.

This *Lesson Set* includes two *Teaching Plans* and related *Lessons* for students: (a) No. 5: Madison on Federalism and Republicanism and (b) No. 6: Anti-Federalists on Federalism and Republicanism.

Lesson 5: Teaching Plan
Madison on Federalism and Republicanism

Objectives

Students are expected to

1) identify and comprehend ideas on federalism and republicanism in *The Federalist* 14 and 39;
2) examine and explain ideas on federalism and republicanism in *The Federalist* 14 and 39;
3) find examples of federalism and republicanism in the Constitution of 1787 and explain how they fit ideas of Madison in *The Federalist* 14 and 39;
4) evaluate Madison's position on a compound federal republic in *The Federalist* 14 and 39.

Estimation of Time Needed to Complete This Lesson: No More Than Two Classroom Periods.

Opening the Lesson

Ask students: what is a federal republic? Is the United States of America a federal republic? Can you name four or five countries in the world that are federal republics? Why are these countries not federal republics: France, United Kingdom of Great Britain, Japan? Why are these countries federal republics: Canada, West Germany, India? Discuss these questions briefly and then have students read the two introductory sections in this lesson.

Carefully examine and discuss with students the diagram and table in the introductory sections. The diagram shows differences between confederalism, federalism, and unitary form of government; the table shows the division of powers between two levels of government in the American federal system.

Developing the Lesson

Have students read the excerpt from *The Federalist* 14. Require them to answer the questions at the end of the document. Conduct a classroom discussion on questions 1-4 that follow the document. Insist that students explain and support their answers with reasons drawn from the document. Emphasize Madison's definitions of republicanism and its relationship to his definition of federalism. Highlight the novelty of Madison's conception of federalism and republicanism and the controversy it created.

Concluding the Lesson

Have students read the excerpt from *The Federalist* 39. Require students to answer the questions at the end of the document. Conduct a classroom discussion of questions 1-7 that follow the document, and make certain that students support answers with references to specific parts of the document under discussion.

Divide students into four groups and distribute the four sets of statements on the next page to each group. They are to decide whether or not each of the statements agrees with Madison's ideas in *The Federalist* 14 and 39. And they must indicate the source of the evidence for each answer: document No. 14, document No. 39, or both numbers 14 and 39. Name a chairperson for each group—I, II, III, IV—to manage the group's deliberations and decisions about its set of statements. At the conclusion of the group meetings, ask each chairperson to come to the front of the room to represent his or her group. Ask each chairperson in turn to report the group's answers.

As the chairperson for Group I reports his or her group's answers, other class members should listen attentively and critically. If anyone hears an incorrect answer, the person should attempt to voice a correction. Corrections, of course, must be based on evidence in the documents, *The Federalist* 14 and 39. The teacher acts as a judge to determine correct answers. Repeat this procedure with the chairperson for Groups II, III, and IV. It might be fun to keep score. Award one point to a group for each correct answer. Subtract one point for each error. Award one point to a group that corrects another group's error. At the end of the activity, tally and report the final score.

Statements for Group I

I-1. The Constitution of 1787 establishes an alliance of sovereign states.

I-2. Under the Constitution of 1787, the states give up all powers of independent action.

I-3. The Constitution of 1787 creates a system in which the state governments retain power to accept or reject laws of the government of the United States.

I-4. The 1787 Constitution proposes a union of states in which the national government is di-

rectly and wholly responsible to the several state governments.

I-5. Republicanism is the same as pure democracy.

Statements for Group II

II-1. In a federal republic, state governments within the nation have certain powers that they exercise independently of the national government.

II-2. In a federal republic, the federal government has the power to act directly on the several state governments, but not on the people of these states.

II-3. The process used for ratification of the 1787 Constitution is an example of federalism.

II-4. Procedures for amendments to the 1787 Constitution include both federal and national characteristics.

II-5. The sources of power and membership of both parts of the Congress are examples of the mixed characteristics of the Constitution of 1787, which includes both federal and national features.

Statements for Group III

III-1. A government based solely on majority vote of all the people is wholly national in its character.

III-2. A pure democracy is necessarily limited to a small territory with a small population.

III-3. A government that is totally responsive to the several states within the nation is wholly federal.

III-4. A republican form of government is always a federal form of government.

III-5. Madison desired a consolidated government.

Statements for Group IV

IV-1. The federal system in the Constitution of 1787 would provide greater security and liberty for the states and people of the United States.

IV-2. A republican form of government can operate in a large territory with a large population.

IV-3. The thirteen American state governments in 1787 conformed to Madison's definition of a republic.

IV-4. The Constitution of 1787 proposed a government with both federal and national characteristics.

IV-5. Retention of significant powers by the states in the Constitution of 1787 is an example of the federal character of this document.

Lesson 5
Madison on Federalism Republicanism

Introduction to Key Ideas

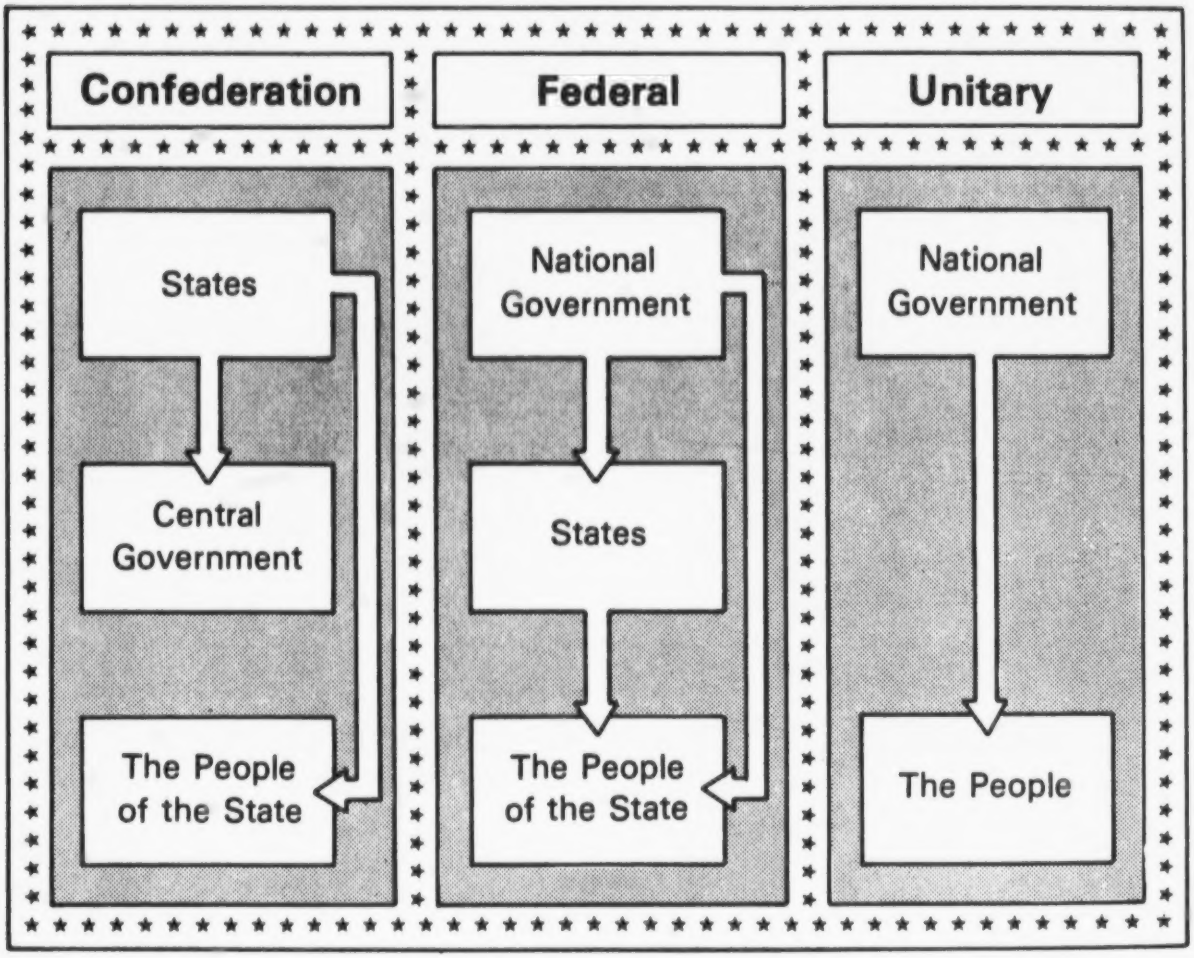
A **republic** is a type of government that functions through elected representatives of the people. In a republican government, the people are sovereign because their representatives serve at their pleasure for the common good. In contrast to a republic, a **pure** or **direct democracy** is a form of government in which the people govern directly instead of through representatives elected by them. In today's world, people tend to use interchangeably the words **republic** and **representative democracy**.

In the world of the 1780s, the **republican form** of government was rare; monarchies and aristocracies prevailed. These nonrepublican forms of government function without representation of or participation by the common people. In an absolute monarchy, one person (king or queen) rules; and in an aristocracy, a small elite group of aristocrats or nobles exercise power in government. Power usually is based on heredity in a monarchy or aristocracy.

Americans in the 1780s were committed to **republicanism**, beliefs and practices that support a republic instead of a monarchy, aristocracy, or other nonrepublican forms of government. They tended to agree that the rights and liberty of individuals could only be secured through a **republican** form of government. Americans in the 1780s also tended to agree on the need for a **federal form** of government, one that divided powers between a central or national government and several state governments within the nation. Furthermore, most Americans of the 1780s seemed adamantly opposed to a **consolidated or unitary government**, one in which all power is exercised by a central or national government.

If a large majority of Americans in the 1780s agreed on their need for a government that was both **republican** and **federal**, they certainly were divided about the kind of federal republic they should have. The Anti-Federalists favored a **confederal system**, like the government under the Articles of Confederation, in which sovereign states would have the most significant powers (see Lesson 6 for discussion of the Anti-Federalist position). James Madison in *The Federalist* had a different scheme for dividing powers between a central or national (federal) government and several state governments, one that enhanced the powers of a national government within a Federal Union of states. (See the Diagram, *Different Forms of Government*, on the next page.) This Diagram highlights differences in the federal system favored by Madison and the confederation form favored by the Anti-Federalists.

Different Forms of Government



Madison's Model for a Federal Republic

In Madison's model, the national (federal) government has certain powers that are granted only to it in the Constitution. The state governments also have powers that the national government is not supposed to exercise. See the table on the next page for examples of how the Constitution—in line with Madison's model for the federal form of government—divides powers between the national and state governments. The table also shows that some powers are shared by both the national and state governments. Notice in the table that some powers are denied strictly to the federal government, some are denied to the state governments, and some are denied to both levels of government.

In the Madisonian federal system, the powers of the national government are limited by the Constitution. However, within its field or range of powers, the national (federal) government is supreme. The states can neither ignore nor contradict the Constitution and federal laws made under it. Thus, within certain limits set in the Constitution, the national government has supreme power over the states and the people within the federal system. In this federal system, two levels of government (national and state) exercise power separately and directly on the people at the same time. The people of each state must obey laws of their state government and their national government.

In the Madisonian model, the republican government of the United States would exercise power directly on all the states and people of a very large national domain, extending in 1787 from the Atlantic Coast in the east to the Mississippi River in the west and from the Canadian border in the north to the Florida border in the south. This scheme for a federal republic was bold and innovative, nothing less than the daring invention of a political system.

Before Madison, political thinkers were unanimous in believing that a republic could exist only in a rather small territory, where the people could be in direct contact with representatives who would readily know and respond to their interests and needs. And before Madison, a federal republic was conceived only as a loose union of sovereign small republics (this was the idea that Anti-Federalists defended against Madison's model of a federal republic).

Madison gave new meaning to the term, **federal republic**, a definition that has persisted until today. In *The Federalist*, Madison argued that it was both possible and desirable to have federalism and republicanism in a large territory, such as the United States. (See *The Federalist* 10 and 14.) And he argued that his "new federalism" occupied the middle ground between the extreme **confederalism** of his Anti-Federalist foes and the extreme nationalism of a unitary or consolidated form of government. (See *The Federalist* 39.)

TABLE 1
Examples of How the Constitution Divides Powers

	TO NATIONAL GOVERNMENT	TO STATE GOVERNMENTS	TO BOTH LEVELS OF GOVERNMENT
POWERS GRANTED	To coin money To conduct foreign relations To regulate commerce with foreign nations & among states To provide an army and a navy To declare war To establish courts inferior to the Supreme Court To establish post offices To make laws necessary and proper to carry out the foregoing powers	To establish local governments To regulate commerce within a state To conduct elections To ratify amendments to the federal Constitution To take measures for public health, safety, & morals To exert powers the Constitution does not delegate to the national government or prohibit the states from using	To tax To borrow money To establish courts To make and enforce laws To charter banks and corporations To spend money for the general welfare To take private property for public purposes, with just compensation
POWERS DENIED	To tax articles exported from one state to another To violate the Bill of Rights To change state boundaries	To tax imports or exports To coin money To enter into treaties To impair obligations of contracts To abridge the privileges or immunities of citizens	To grant titles of nobility To permit slavery To deny citizens the right to vote because of race, color, or previous servitude To deny citizens the right to vote because of sex

Republicanism and Federalism in *The Federalist* 14

In *The Federalist* 14 James Madison discussed his ideas on federalism and republicanism. And he defended these ideas against Anti-Federalist critics, who argued that it was not possible to have a federal republic in a large nation such as the United States of America. Examine the following excerpt from No. 14 of *The Federalist* and respond to the items that follow this document.

***The Federalist* No. 14 (Madison)**

November 30, 1787
To the People of the State of New York:

WE HAVE seen the necessity of the Union as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the old world, and as the proper antidote for the diseases of faction [majoritarian tyranny and social instability], which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains within this branch of our inquiries is to take notice of an objection that may be drawn from the great extent of country which the Union embraces. A few observations on this subject will be the more proper as it is perceived that the adversaries of the new Constitution are availing themselves of a prevailing prejudice with regard to the practicable sphere [size of the territory] of republican administration, in order to supply by imaginary difficulties the want of those solid objections which they endeavor in vain to find.

The error which limits republican government to a narrow district [small territory] has been unfolded and refuted in [*The Federalist* 10]. . . . [I]t seems to owe its rise and prevalance chiefly to the confounding of a republic [government by elected representatives of the people] with a democracy [a pure democracy, governed directly by majority rule of the people], and applying to the former [republic] reasonings drawn from the nature of the latter [pure or direct democracy]. The true distinction between these forms was also adverted to on a former occasion [*The Federalist* 10]. It is that in a [pure] democracy the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents. A [pure or direct] democracy, consequently, must be confined to a small spot [with few people]. A republic may be extended over a large region. . . .

As the natural limit of a [pure] democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions, so the natural limit of a republic is that distance from the center which will barely allow the representatives of the people to meet as often as may be necessary for the administration of public affairs. Can it be said that the limits of the United States exceed this distance? [Madison argues that the territory of the United States is not too large to permit effective republican government]. . . .

Favorable as this view of the subject may be, some observations remain which will place it [a federal republic in a large territory] in a light still more satisfactory.

In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments [of the states], which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity [as the general or national government will not overwhelm and destroy the authority and powers of the state governments]. . . .

A second observation to be made is that the immediate object of the federal Constitution is to secure the union of the thirteen . . . States, which we know to be practicable; and to add to them such other States as may arise in [territories on and beyond the western frontier of the United States], which we cannot doubt to be equally practicable. . . .

Let it be remarked, in the third place, that the [communication] throughout the Union will be facilitated by new improvements. Roads will everywhere be shortened and kept in better order; accomodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout, the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country. . . .

A fourth and still more important consideration is that as almost every State will on one side or other

be a frontier, and will thus find, in regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the States which lie at the greatest distance form the heart of the Union, and which, of course, may partake least of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand on particular occasions, in greatest need of its strength and resources [to provide protection against the threat of foreign powers]. . . .

I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never [be influenced by those who argue against a firm and close Federal Union of the states and people of America]. Harken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow-citizens of one great, respectable, and flourishing [republican] empire. Harken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces [weakening or destroying the Union of the American states] in order to preserve our liberties and promote our happiness. But why is the experiment of an extended republic to be rejected merely because it may comprise what is new? Is it not the glory of the people of America that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations [such as the idea of an federal republic in a large territory] displayed on the American theater in favor of private rights and public happiness. . . .

Publius

Respond to the following items about The Federalist 14. Explain and justify responses with evidence and examples in specific parts of the preceding document.

1. Madison emphasizes his distinction of a pure democracy from a republic. (a) What is the difference between these two forms of government? (b) Why does Madison stress this difference? (How does this help him make his argument for a large federal republic?)

2. Why does Madison prefer a large federal republic to a loose confederation of small republics? (According to Madison, how does his model of a federal republic provide greater safety, security, and liberty for individuals and their communities?)

3. Madison makes the following four points in favor of his model of a federal republic:

   a. The state governments would retain significant authority and power within the Federal Union.
   b. Foundations for addition of new states to the Federal Union would be established.
   c. Better connections and communications between all parts of the country would be achieved.
   d. Protection of all parts of the country against foreign powers would be increased.

Explain each point and provide examples of each one.

4. How does Madison respond to critics who fault his model for being new or innovative? Do you agree with him?

Republicanism and Federalism in *The Federalist* 39

In this essay, James Madison explained how the Constitution of 1787 would establish a government that is both republican and federal. He defended his model of a federal republic against Anti-Federalist critics. They claimed that Madison wanted a national or consolidated government, not a true federal system. Madison argued that his model was a blend of national and federal elements, and in so doing, he set forth a new conception of federalism. Examine the following excerpt from *The Federalist* 39 and respond to the items that follow this document.

***The Federalist* No. 39 (Madison)**

January 16, 1788
To the People of the State of New York:

. . . The first question that offers itself is whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary [supporter] of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? . . .

If we resort for a criterion . . . we may define a republic to be . . . a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it. . . . It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified. . . .

On comparing the Constitution planned by the convention with the standard here fixed, we perceived at once that it is, in the most rigid sense, conformable to it [and therefore is a republican form of government]. . . .

"But it was not sufficient," say the adversaries [foes] of the proposed Constitution, "for the convention to adhere to the republican form. They ought with equal care to have preserved the *federal* form, which regards the Union as a *Confederacy* of sovereign states; instead of which they have framed a *national* government, which regards the Union as a *consolidation* of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision. . . .

First.—In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution will not be a *national* but a *federal* act.

That it will be a federal and not a national act, as these terms are understood by the objectors—the act of the people, as forming so many independent States, not as forming one aggregate nation—is obvious from this single consideration: that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its

own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal* and not a *national* constitution.

The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion and on the same principle as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress [under the Articles of Confederation]. So far the government is *federal*, not *national*. . . .

The difference between a federal and national government, as it relates to the *operation of the government*, is by the adversaries of the plan of the convention supposed to consist in this, that in the former, the powers operate on the political bodies composing the Confederacy [the states] in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the *national* not the *federal* character. . . . But the operation of the government on the people [as individuals] . . . will, in the sense of its opponents . . . designate it, in this relation, a *national* government.

But if the government be national with regard to the *operation* of its powers, it changes its aspect . . . in relation to the extent of its powers. The idea of a national government involves in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. . . . In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction [power] extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty [power] over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal [Supreme Court] which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution. . . . Some such tribunal is . . . essential to prevent an appeal to the sword and a dissolution of the compact [Union of the States]. . . .

If we try the Constitution by . . . the authority by which amendments [to the Constitution] are to be made, we find it neither wholly *national* nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union. . . . Were it wholly federal . . . the concurrence [agreement] of each State in the Union would be essential to every alteration [amendment] that would be binding on all. The mode provided by the plan of the convention [Constitution of 1787] is not founded on either of these principles. In requiring more than a majority, and . . . in computing the proportion by *States*, not by *citizens*, it departs from the *national* and advances towards the *federal* character; in rendering the concurrence of less than the whole number of states sufficient, it loses again the *federal* and partakes of the *national* character.

The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists [Anti-Federalists] is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the extent of them, again, it is federal, not national; and finally in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

Publius

Respond to the following items about Madison's ideas on republicanism and federalism in The Federalist 39. Support and explain responses with references to specific parts of this document.

1. What is Madison's definition of a republic? (Identify the essential characteristics of a republic; also see the excerpt in this lesson from *The Federalist* 14.)

2. What is Madison's definition of a federal republic? (Identify the essential characteristics that a republic must have in order to be considered federal.)

3. Madison says that the Constitution would provide a government "neither wholly federal nor wholly national." Why does he say this? In responding to this question, examine and explain these points by Madison in *The Federalist* 39:

   a. The means for ratification of the Constitution is an example of federalism.
   b. The source of legislative powers in the new Constitution is partly national (House of Representatives) and partly federal (Senate).
   c. The operation of the new government would be an example of nationalism; it would act directly on individuals throughout the nation.
   d. The extent or scope of the new government would exemplify federalism, because it is not supreme over all things but only in terms of the powers granted to it in the Constitution; the states would retain significant powers and would be supreme within their constitutionally defined sphere of operations.
   e. The means for amending the Constitution is both federal and national, since it requires special majority votes of both the Congress and the states.

4. Which "character," the federal or the national, prevails in Madison's model of a compound federal republic? Is it one that is both federal and national in its composition? Explain.

5. Refer to Articles IV, V, and VI of the Constitution. Find at least five examples that show how government under the Constitution of 1787 conformed to Madison's definition of a compound federal republic in *The Federalist*.

6. Why did his critics in 1787 and his supporters, from then until now, stress that Madison had given a new meaning to the term *federal republic*?

7. What is your evaluation of Madison's model of a compound federal republic? (Does he convince you in *The Federalist* 14 and 39 of the merits of his scheme?)

Lesson 6: Teaching Plan
Anti-Federalists on Federalism and Republicanism

Objectives

Students are expected to

1) identify and comprehend Anti-Federalist ideas on confederation and republicanism;
2) examine and explain Anti-Federalist ideas on confederation and republicanism in two documents: *Letter IV* of Agrippa and *Letter XVII* of The Federal Farmer;
3) compare and contrast Anti-Federalist ideas on federalism and republicanism with ideas of James Madison in *The Federalist* 10, 14, 39;
4) select and defend a position, pro or con, on a constitutional amendment proposed by Anti-Federalists at the Massachusetts Ratifying Convention.

Estimation of Time Needed to Complete This Lesson: No More Than Three Classroom Periods.

Opening the Lesson

Read with students the quotation from a Maryland Farmer on the first page of this lesson. He claims that the definition of federalism in *The Federalist* is wrong. Then turn to the list of characteristics in the Anti-Federalist definition of federalism (confederalism). Go over each statement in this list and ask: How does this definition differ from ideas in the Constitution and *The Federalist*?

Discuss this question speculatively and briefly as a warm-up for studying this lesson. Then ask students to read in this lesson from the opening page to the end of *Letter IV* by Agrippa. Require them to respond to the items at the end of *Letter IV*.

Developing the Lesson

Discuss items 1-3 at the end of the document by Agrippa. Require students to explain and support answers with evidence from the document.

Assign *Letter XVII* by The Federal Farmer. Ask students to respond to the items at the end of this document. Conduct a discussion of items 1-3 at the end of the document by The Federal Farmer. Emphasize application of Anti-Federalist criteria for a federal system to analysis and evaluation of the Constitution of 1787. Have students explain why, according to the Anti-Federalists, the Constitution of 1787 was not an example of federalism. Once again, insist upon use of evidence in relevant documents to explain and support answers to questions in this discussion.

Concluding the Lesson

Ask students to read the final section of this lesson, which sets up a proposition for a classroom debate—Resolved: "That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised." This proposal was advanced by the Anti-Federalist minority at the Massachusetts Ratifying Convention.

Divide the class into two groups: one in favor of the proposed amendment (Anti-Federalist position) and the other group against it (Madison's position). Give each group time to discuss its position, to select a three-person team to represent the group in a debate, and to plan a strategy for the forthcoming debate. Conduct a debate on the resolution. Use the following guidelines to structure the debate.

Have the Pro side present its position first; the Con group follows; each team has a maximum of twelve minutes to present its position. The Pro side may ask three questions of the Con side, then the Con side may ask three questions of the Pro side; establish a two minute time limit for asking and answering each question.

Open the discussion to the full class. Students may speak in favor of their side in the debate or against the other side. Or they may ask questions of members of the two teams at the front of the class. The time limit for each speaker is two minutes. Conclude the activity by asking students to record their opinions, for or against, on the resolution in the debate. Report the results to the class.

Lesson 6
Anti-Federalists on Federalism and Republicanism

The Anti-Federalist View of Federalism

Anti-Federalists disputed the definition of federalism offered by James Madison and his co-authors in *The Federalist*. They claimed to be the true federalists in the debate on ratification of the Constitution.

A Maryland Farmer, a prominent Anti-Federalist writer, said (*Baltimore, Maryland Gazette*, 7 March 1788):

> There are but two modes by which men are connected in society, the one which operates on individuals, this always has been, and ought still to be called, *national government*; the other which binds States and governments together . . . has heretofore been [called] a *league or confederacy*. The term *federalists* is therefore improperly applied to themselves, by the friends and supporters of the proposed constitution [of 1787]. . . . They [the self-proclaimed federalists] are *national men*, and their opponents [the so-called Anti-Federalists] . . . are *federal*, in the only true and strict sense of the word.

The Anti-Federalists argued that the Constitution of 1787 did not fully match the correct definition of federalism (what we today call confederalism or a confederation). According to the Anti-Federalists, a true federation (confederation) has these characteristics:

- The terms of union in the founding charter (constitution) are established by the states.
- Only the states have authority to amend the charter of union [the constitution].
- Only the states [not the people] are represented directly in the legislature of the confederation (central government).
- The government of the confederation (central government) deals directly with the states, the basic units of the system, and through them (the states) with the people.
- The government of the confederation (central government) does not act directly on and over the individuals of the states; only the state governments do this with regard only to their own citizens.
- The powers of the central government are limited exactly to those few powers expressly stated and delegated in the charter of union (constitution).

The Anti-Federalist definition of federalism exactly fits the Articles of Confederation, but not the Constitution of 1787. During the ratification debate, the Anti-Federalists claimed that the Constitution, though it had some federal characteristics, would develop into a unitary (consolidated) national government. They predicted that the powers and rights of state governments would be destroyed, and with them the liberty of the people.

The Anti-Federalist View of Republicanism

The key to liberty, according to Anti-Federalists, is direct and substantial representation of the people in their government. A true republic provides a government that is close to (not remote from) the people it represents. This key, however, would be lost under the Constitution of 1787, claimed the Anti-Federalists. They argued that the central government would have too much power at the expense of state governments, which would lead to a "consolidation of the states" into a national government. Republican government would be lost, they charged, because the people could not be represented properly in a distant national government.

If the United States became one large republic, governed solely by a national government, then it could not be a true republic. Why? Because a true republic cannot exist in a large territory with a large population, claimed the Anti-Federalists. This had never happened in human history, they said.

Anti-Federalists also pointed to writings of great political philosophers, such as the celebrated Frenchman, Montesquieu, who wrote (*The Spirit of the Laws*, 1748) that "it is natural for a republic to have only a small territory; otherwise it cannot long subsist. . . . [By contrast] a large empire supposes a despotic authority in the person who governs." Americans who accepted the wisdom of Montesquieu believed that a national government of the United States could not be a true republic because the nation was too large.

The Anti-Federalists emphatically rejected "federalism in a large republic"—the position of James Madison in *The Federalist* 10, 14, 39, and 51. Rather, they argued for a confederation of small republics (states) with a very limited central government and stronger state governments (the small republics).

According to Anti-Federalists a true republic has the following characteristics:

- It exists only in a small territory with few people.
- Representatives in government mirror traits and ideas of their constituents; social groups and their interests are reflected in the legislature.
- Majority rule prevails; people have ample opportunity and motivation to participate in *their* government.
- The government is directly accountable to the people through regular elections of officials with very short terms of office.
- Government is limited and tyranny prevented primarily by majority rule expressed through popular participation in government.
- The government has little need for strong coercive powers, because when people are part of their government, they are likely to be satisfied with it and conform readily to its rules.

Letter IV of Agrippa, an Anti-Federalist

James Winthrop of Massachusetts tried to influence the people of his state to reject the Constitution of 1787. Toward this end, he wrote sixteen letters, with the pseudonym Agrippa, published in the *Massachusetts Gazette* in 1787-1788. An excerpt from Agrippa's *Letter IV* is presented below. Read this letter carefully and identify the author's ideas about federalism and republicanism.

Letter IV, Agrippa

December 3, 1787
To the People.

Having considered some of the principal advantages of the happy form of government [Articles of Confederation] under which it is our peculiar good fortune to live, we find by experience that it is the best calculated of any form hitherto invented to secure to us the rights of our persons and of our property. . . .

We find . . . that after the experience of near two centuries our separate governments [thirteen state governments] are in full vigour. . . . The new system [Constitution of 1787] is, therefore, for such purposes, useless and burdensome.

Let us now consider how far [the Constitution of 1787] is [likely to contribute to] the happiness of the people and their freedom. It is the opinion of the ablest writers on the subject, that no extensive empire can be governed upon republican principles, and that such a government will degenerate to a despotism, unless it be made up of a confederacy of smaller states, each having the full powers of internal regulation [such as the United States under the Articles of Confederation]. This is precisely the principle which has hitherto preserved our freedom. No instance can be found of any free government of considerable extent which has been supported upon any other plan. Large and consolidated empires may indeed dazzle the eyes of a distant spectator with their splendour, but if examined more nearly are always found to be full of misery. The reason is obvious. In large states the same principles of legislation will not apply to all the parts [because different people and places have various needs and interests]. . . . We accordingly find that the very great empires have always been despotic. They have indeed tried to remedy the inconveniences to which the people were exposed by local regulations; but these contrivances have never answered the end. The laws not being made by the people, who felt the inconveniences, did not suit their circumstances. It is under such tyranny that the Spanish provinces languish, and such would be our misfortune and degradation, if we should submit to have the concerns of the whole empire managed by one legislature. To promote the happiness of the people it is necessary that there should be local laws; and it is necessary that those laws should be made by the representatives of those who are immediately subject to the want of them. . . .

It is impossible for one code of laws to suit Georgia and Massachusetts. They must . . . legislate for themselves. Yet there is, I believe, not one point of legislation that is not surrendered [by the thirteen state governments] in the proposed plan [Constitution of 1787]. Questions of every kind respecting property are determinable in a continental [national] court [of law], and so are all kinds of criminal causes. . . . No rights are reserved to the citizens. The laws of Congress [the national legislature] are in all cases to be the supreme law of the land, and paramount to the constitutions of the individual states. The Congress may institute what modes of trial they please, and no plea drawn from the constitution of any state can avail. This new system is, therefore, a consolidation of all the states into one large mass, however diverse the parts may be of which it is to be composed. The idea of [a unitary] republic, on an average, one thousand miles in length, and eight hundred in breadth, and containing six millions of white inhabitants all reduced to the same standard of morals, or habits, and of laws, is in itself an absurdity, and contrary to the whole experience of mankind. The attempt by Great Britain to introduce

such a system, struck us with horror, and when it was proposed by some theorist that we should be represented in parliament, we uniformly declared that one legislature could not represent so many different interests for the purposes of legislation and taxation. This was the leading principle of the revolution, and makes an essential article in our creed. All that part, therefore, of the new system [Constitution of 1787], which relates to the internal government of the states, ought at once to be rejected.

Agrippa

Respond to the following items about Letter IV of Agrippa. Explain and justify responses with evidence from this document.

1. According to Agrippa, what are the characteristics of a *true republic*?
2. Why does Agrippa favor a confederation of *true republics* instead of the federal system in the Constitution of 1787?
3. Compare and contrast Agrippa's ideas on federalism and republicanism with those of James Madison in *The Federalist* 10, 14, and 39. (See Lesson 5 for information about Madison's position on these ideas.)

Letter XVII of The Federal Farmer

The Federal Farmer, one of the best Anti-Federalist writers, was once thought to have been Richard Henry Lee. This opinion is no longer accepted by most scholars, who are not sure who he was. The *Letters of The Federal Farmer to the Republican* were published in the *Country Journal* of Poughkeepsie, New York from October 8, 1787 to January 23, 1788. The author claimed to have the traditional and true definitions of federalism and republicanism, the ones held by great political philosophers, such as the Baron de Montesquieu of France (1689-1755). Examine the following excerpt from *Letter XVII* of The Federal Farmer and identify the author's ideas on federalism and republicanism.

Letter XVII
From the Federal Farmer to the Republican

January 23, 1788
Dear Sir,

I believe the people of the United States are full in the opinion, that a free and mild [limited] government can be preserved in their extensive territories, only under the . . . forms of a federal republic. . . . A question then arises, how far that system partakes of a federal republic. . . . [I]t appears to be the first . . . step to a consolidation of the states; that its strong tendency is to that point [a unitary form of government, not a true federal republic].

But what do we mean by a federal republic? and what by a consolidated government? To erect a federal republic, we must first make a number of states on republican principles; each state with a government organized for the internal management of its affairs: The states, as such, must unite under a federal head, and delegate to it powers to make and execute laws in certain . . . cases, under certain restrictions. . . . To form a consolidated, or one entire government, there must be no state, or local governments, but all things, persons and property, must be subject to the laws of one legislature alone; to one executive, and one judiciary. . . . A federal republic . . . supposes state or local governments to exist, as the body or props, on which the federal head rests. . . . In erecting the federal government . . . each state must be a sovereign body. . . . A confederated republic being organized, each state must retain powers for managing its internal police, and all delegate to the union [central government] powers for managing general concerns [relations with foreign nations]: The quantity of power the union must possess is one thing, the mode of exercising the powers given, is quite a different consideration; and it is the mode of exercising them, that makes one of the essential distinctions between one entire or consolidated government, and a federal republic; that is, however the government may be organized, if the laws of the union, in most important concerns, as in levying and collecting taxes, raising troops, [and so forth] operate immediately upon the person and property of individuals, and not on states, extend to organizing the militia . . . the government, as to its administration, as to making and executing laws, is not federal, but consolidated. . . .

. . . [T]he people form this kind of government [true federal republic] . . . because their territories are too extensive to admit of their assembling in one legislature, or of executing [carrying out] the laws on free principles under one entire government. They convene in their local assemblies, for local purposes, and for managing their internal concerns, and unite their states under a federal head [central government] for general purposes. It is the essential characteristic of a confederated republic, that this head be dependent on and kept within limited bounds by, the local governments; and it is because, in these alone [the state and local governments] the people can be substantially assembled or represented. . . . [I]n this kind of government, the [central government] powers [are] placed in a few hands, and accordingly limited, and specifically enumerated; and the [state governments are] strong and . . . composed of numerous members. Wise men will always place the controlling power [in government] where the people [can directly influence elected representatives who are accountable to them]. By the proposed system [Constitution of 1787], the federal head [central government] will possess, without limitation, almost every species of power that can, in its exercise . . . endanger liberty; while in it . . . the people will have but the shadow of representation, and but the shadow of security for their rights and liberties. . . .

There are two ways . . . of raising checks, and guarding against [abuses of power] in a federal system. The first is . . . to require the attendance of a large proportion of the federal representatives [in Congress], as two-thirds or three-fourths of them; and in passing laws, in . . . important cases [levying taxes, maintaining military forces, and other matters of great national concern], to require the consent of two-thirds or three-fourths of the members present. The second is, by requiring that certain important laws of the federal head [central government], as a requisition or a law for raising monies by excise shall be laid before the state legislatures, and if disapproved of by a given number of them, say by as many of them as represent a majority of the people, the law shall have no effect. . . . The [second check] is founded on this principle, that the people will be substantially represented, only in their state or local assemblies; that their principal security must be found in them; and that, therefore, they ought to have ultimately a constitutional control over such [important] measures. . . .

The Federal Farmer

Respond to the following items about Letter XVII of The Federal Farmer. Explain and defend your responses with evidence in the preceding document.

1. According to The Federal Farmer, what are the essential characteristics of a *true* federal republic?
2. According to The Federal Farmer, how does the Constitution of 1787 deviate from the correct definition of a federal republic?
3. How do ideas of The Federal Farmer on federalism and republicanism differ from those of James Madison in *The Federalist* 10, 14, and 39? (See Lesson 5 for information about Madison's ideas.)

A Federalist/Anti-Federalist Debate

The conflicting ideas of James Madison and the Anti-Federalists on federalism and republicanism can be objects of a classroom debate. The debate can be organized around an amendment to the Constitution of 1787 that was proposed by the Anti-Federalists at the Massachusetts Ratifying Convention. The proposed amendment follows:

> RESOLVED: That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.

Two groups of students should be formed: one in favor of the proposed amendment (Anti-Federalist position) and the other against it (Madison's position). Each group should meet to discuss ideas to be used in support of its position in a formal debate. Then three members of each group should be selected to represent the group in a debate before the full class. The teacher will establish time limits for speeches and other rules for the debate.

Notice the similarity of the proposed amendment to the Tenth Amendment to the Constitution of the United States, which was approved in 1791:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The most significant difference in the two statements is the use of "expressly" before "delegated" in the Massachusetts proposition. According to both sides in this argument, the presence or absence of this word, *expressly*, would make a great difference in the interpretation one could make about limits on the powers of the federal or central government in relationship to the state governments. Arguments in this classroom debate should focus on the significance of "expressly delegated" in the Massachusetts proposal.

Lesson Set IV
Separation of Powers and Limited Government

Limited government means that officials cannot act arbitrarily. Rather, they are bound by the higher law of a constitution, which guides and limits their use of power. A constitutional government is a limited government.

Separation of powers among three branches of government—legislative, executive, and judicial—is a fundamental means to limited government in the Constitution of the United States. James Madison summarized his position on the separation of powers in *The Federalist* 47: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elected, may justly be pronounced the very definition of tyranny. . . ."

The ultimate purpose of separation of powers, a means to limited government, is protection of the rights and liberty of individuals. In a republican government, one based on the will of the people, Madison believed that a great danger to liberty would come from majority rule expressed through the people's representatives in Congress. So, he was especially eager to build into the Constitution limits on the power of the House of Representatives. Thus, the Congress is divided into two branches; the powers of the Senate and the House of Representatives can be circumscribed and checked. This model of government also requires the executive and the legislative branches to check one another.

The Madisonian system provides for separation and sharing of powers by three distinct branches of government. For the system to work, each branch must have some say in the work of the others as a way to check and limit the power of the others. No branch can accumulate too much power. But each branch, and the government generally, has enough power to do what the people expect of it. So the government is both limited and strong, neither too strong for the liberty of the people nor too limited to be effective in maintaining order, stability, and security for the people.

This *Lesson Set* treats three related ideas: separation of powers, checks and balances, and limited government. Madison's views are presented in *The Federalist* 47, 48, 51. The opposing Anti-Federalist position is presented in *Essay I* by Centinel (Samuel Bryan of Pennsylvania).

This *Lesson Set* has two *Teaching Plans* and related *Lessons* for students: (a) No. 7: Madison on Separation of Powers and (b) No. 8: Centinel's Anti-Federalist Ideas.

Lesson 7: Teaching Plan
Madison on Separation of Powers

Objectives

Students are expected to

1) identify and comprehend James Madison's ideas on separation of powers in *The Federalist* 47, 48, and 51;
2) examine and explain ideas on separation of powers in *The Federalist* 47, 48, 51;
3) find examples of separation of powers in the Constitution of the United States and explain how they fit ideas expressed by Madison in *The Federalist*;
4) evaluate ideas on separation of powers in terms of criteria in *The Federalist*.

Estimation of Time Needed to Complete This Lesson: No More Than Two Classroom Periods.

Opening the Lesson

Ask students: What is separation of powers in government? What is checks and balances in government? Why are they included in the Constitution? Have students read the two introductory pages to this chapter to reinforce knowledge of these ideas that they bring to the lesson from other sources.

Take a few moments to go over the diagram in the first part of the lesson, which illustrates the related concepts of separation of powers and checks and balances. Discuss this diagram to make certain that students have a rudimentary knowledge of separation of powers and checks and balances.

Developing the Lesson

Have students read the excerpts from *The Federalist* 47, 48. Check students' comprehension of main ideas in the reading assignment by requiring them to complete the exercise at the end of the two documents. Statements in item 3 that agree with Madison are: b and d.

Assign the excerpt from *The Federalist* 51. Have students turn to the five items on the final pages of the lesson. Have students complete items 1-5 in preparation for a classroom discussion.

Concluding the Lesson

Conduct a classroom discussion on items 1-5 in the set of exercises at the end of the lesson. Require students to support or explain their answers by referring to pertinent parts of *The Federalist* 47, 48, and 51. In general, ask students to give reasons for their answers and encourage students to challenge the answers and reasons of their peers whenever they think that insufficient justification has been provided for an answer.

Discussions of items 1-5 should emphasize the interrelated civic values of limited government, the rule of law, and ordered liberty as desired ends or goals of separation of powers as a basic principle of government in the Constitution.

NOTE: Other essays in *The Federalist* that include discussion of separation of powers, in combination with other topics, are numbers 9, 37, 49, 50, 66, 70, 75, and 78. Interested students might be referred to one or more of these essays.

Lesson 7
Madison on Separation of Powers

Introduction

Separation of powers, a major principle of the U.S. Constitution, is the distribution of power among three branches of government: (1) the legislative, (2) the executive, and (3) the judicial. The legislative branch (Congress) has power, according to Article I of the Constitution, to make certain kinds of laws. In Article II, the Constitution says that the executive branch (headed by the President) has power to enforce or carry out laws. The judicial branch (headed by the Supreme Court) is established in Article III of the Constitution to interpret and apply the law in federal court cases.

Separation of powers in American government is based on writings of two eminent political philosophers, John Locke of England (1632-1704) and Charles Secondat, Baron de Montesquieu of France (1689-1755). However, the great American philosopher-statesman, James Madison, gave his own special touch to the application of this principle to constitutional government in the United States.

In James Madison's model of constitutional government, the separation of powers among three branches is a means to limited government. It is supposed to prevent any person or group in the government from having enough power to become a tyrant and oppress the people. According to Madison, concentration of unlimited power leads inevitably to tyranny because holders of such power are never able to resist the temptation to abuse it. Madison believed that if power is divided, it is less likely to be used to deprive people of their liberty, the highest end of government.

However, neither the Madisonian model nor the U.S. Constitution completely separates powers of government among the three branches. The Constitution empowers the executive to check the legislature, and divides the legislature into two bodies (Senate and House of Representatives) that would check and balance each other. Madison also wanted the executive and the Senate to collaborate to check the threat of majoritarian tyranny—based on the will of the masses of people—that might emerge from the popular body of the legislature, the House of Representatives. (See Lesson Set II, Lesson 3, for discussion of Madison's fears of majoritarian tyranny.)

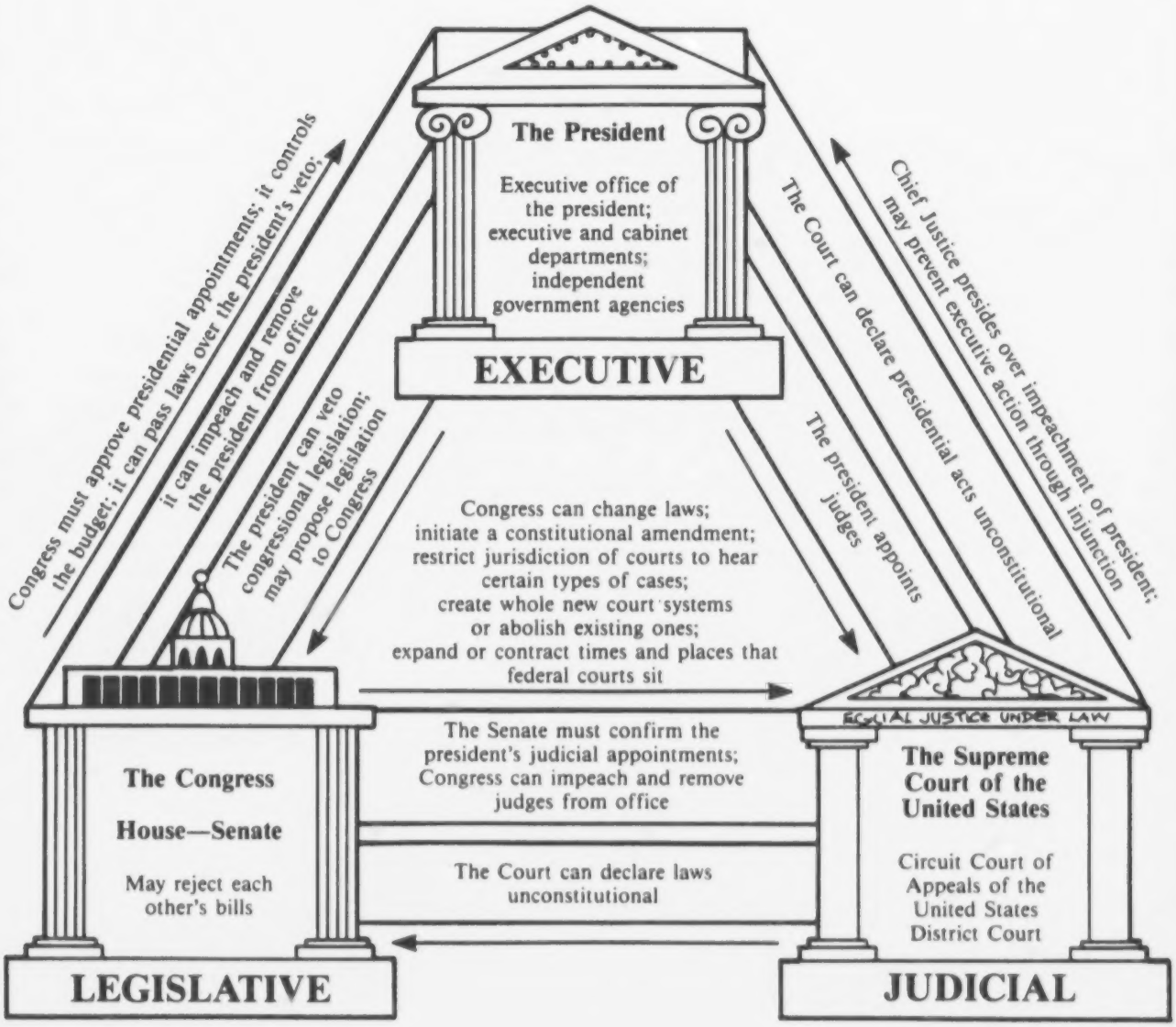
Separation and sharing of powers in the Constitution are shown by the President's participation in lawmaking through the veto, the chief executive's power to reject a law passed by Congress. And the legislative branch is involved in the exercise of executive power through its power to approve the President's appointments of executive officials. These are merely two examples, of many, to show that the Constitution, in line with the Madisonian model of government, permits sharing of power among the three separate branches.

There is a constitutional system of checks and balances, whereby each branch can limit the powers of the others. For example, the President can check Congress with the veto. But the President's veto can be overturned by a subsequent 2/3 vote of Congress. This is one of several checks exercised by one branch over the others to keep the power of government balanced and limited. There is a constitutional government of separated branches that share power. Each separate branch of the government has some influence over the actions of the others, and no branch can exercise its powers without cooperation from the others.

This emphasis on separation of powers as a means to limited government was not supposed to prevent the government from taking effective action in line with majority rule or the popular will. Madison knew that if constitutional limits on government were too strict, it would be too weak to carry out duties that the people expected of it. A government too limited by law would not be able to enforce laws and maintain public order and security.

Madison wanted an effective constitutional government that would be neither too powerful nor too weak. He sought a workable balance between powers granted to government, in the name of the people, and limits on those powers on behalf of individual liberties and rights.

Separation of Powers and Checks and Balances


The President
Executive office of the president; executive and cabinet departments; independent government agencies
EXECUTIVE
Congress must approve presidential appointments; it controls the budget; it can pass laws over the president's veto;
it can impeach and remove the president from office
The president can veto congressional legislation; may propose legislation to Congress
The president appoints judges
The Court can declare presidential acts unconstitutional
Chief Justice presides over impeachment of president; may prevent executive action through injunction
Congress can change laws; initiate a constitutional amendment; restrict jurisdiction of courts to hear certain types of cases; create whole new court systems or abolish existing ones; expand or contract times and places that federal courts sit
The Senate must confirm the president's judicial appointments; Congress can impeach and remove judges from office
The Court can declare laws unconstitutional
The Congress
House—Senate
May reject each other's bills
LEGISLATIVE
EQUAL JUSTICE UNDER LAW
The Supreme Court of the United States
Circuit Court of Appeals of the United States District Court
JUDICIAL

Separation of Powers in *The Federalist*

Madison expressed ideas on separation of powers and limited government in *The Federalist* 47 and 48. Excerpts from these two essays are presented below.

The Federalist No. 47 (Madison)

January 30, 1788
To the People of the State of New York:

. . . The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . . In order to form correct ideas on this important subject it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is . . . Montesquieu. . . .

. . . [H]e did not mean that these departments [three branches of government] ought to have no partial agency in, or no control over [checks of one branch on another] the acts of each other. His meaning . . . can amount to no more than this, that where the whole power of one department is exercised by the same hands, which possess the whole power of another department, the fundamental principles of a free constitution are subverted. . . .

[Montesquieu says] "When the legislative and executive powers are united in the same person or body, there can be no liberty, because . . . *the same* monarch or senate . . . [would] *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subjects would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*." Some of these reasons are more fully explained in other passages; but briefly stated . . . they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author [establish separation of powers among three branches of government, but also some sharing of powers to enable each branch to stop the others from having too much power]. . . .

Publius

The Federalist No. 48 (Madison)

February 1, 1788
To the People of the State of New York:

. . . I shall . . . show that unless these departments [three branches of government] be so far connected and blended as to give to each a constitutional control over the others [checks and balances], the degree of separation . . . essential to a free government . . . can never in practice be duly maintained.

It is agreed . . . that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess . . . an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and that it ought to be effectively restrained from passing the limits assigned to it. . . .

Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? . . .

The conclusion . . . is that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

Publius

Review ideas in The Federalist 47 and 48.

1. What is Madison's definition of separation of powers? (How is the related idea of checks and balances linked to separation of powers in Madison's definition?)
2. How is separation of powers with checks and balances connected to limited government and protection of individual rights and liberties?
3. Examine the following statements and decide which items agree or disagree with Madison's ideas. Make a checkmark next to each statement that agrees with Madison. Refer to *The Federalist* 47 and 48 to explain and support your answers.

_____ a. Separation of powers in the Constitution means that each branch of government is detached totally from the other branches in exercise of powers and duties.

_____ b. Separation of powers in the Constitution involves sharing of duties and powers in government as a means to limited government.
_____ c. The system of checks and balances in the Constitution interferes with and undermines separation of powers as a means to limited government.
_____ d. Madison agrees with the ideas of Montesquieu on separation of powers.
_____ e. State governments in the United States did not practice the principle of separation of powers as defined by Madison.

Examine the excerpt from *The Federalist* 51, which follows. Many scholars have judged this essay and No. 10 to be Madison's best work in *The Federalist*. What is your judgment of this work? What are the main ideas in it? To what extent do you agree or disagree with them? Why?

***The Federalist* No. 51 (Madison)**

February 6, 1788
To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments [branches of government] as laid down in the Constitution? The only answer . . . is . . . by so contriving the interior structure of the government [a system of checks and balances] as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. . . .

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means [checks and balances] and personal motives to resist encroachments of the others. The provision for defense must . . . be [suited] . . . to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions [design of a constitutional system of checks and balances].

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this . . . is to divide the legislature into different branches [Senate and House of Representatives] and to render them, by different modes of election and different principles of action, as little connected with each other as [possible]. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require . . . that it should be fortified. An absolute negative [veto power] on the legislature appears . . . to be the natural defense with which the executive magistrate should be armed. [But this veto power could be misused if not checked in turn by the legislature.]

. . . In a single republic [unitary government] all the power . . . is submitted to . . . a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America [federal system of government], the power . . . is first divided between two distinct governments [federal and state], and then the portion allotted to each subdivided among distinct and separate departments [three separate branches of government with checks and balances]. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. . . .

Publius

Examining Ideas on Separation of Powers

Refer to the preceding excerpts from *The Federalist* 47, 48, 51 to find ideas and information on which to base answers to the following questions. Be prepared to support answers with references to specific parts of these essays.

1. In *The Federalist* 47, Madison says: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." What does this statement say about the value of separation of powers? Do you agree with this statement? Explain.

2. Refer to Articles I, II, and III of the Constitution of the United States. (a) Find at least three examples that show how the powers of government are separated among three distinct branches of government. (b) Find at least three examples of sharing of powers among the three branches of government that show how the powers of the federal government are not completely separated. (c) Does the structure of government in Articles I, II, and III of the Constitution fit Madison's definition of separation of powers? Explain.

3. In 1952 (*Youngstown Company v. Sawyer*), Supreme Court Justice Robert Jackson said: "While the Constitution diffuses power the better to secure liberty, it also contemplates that the practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." Does this statement by Justice Jackson agree with Madison's view of separation of powers expressed in *The Federalist*? Explain.

4. In 1789, at the first session of Congress, several members wanted to add the following amendment to the Constitution: "The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed so that the legislative department shall never exercise the powers vested in the executive or judicial, nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments." This proposed amendment to the Constitution was voted down in Congress. (a) Does this proposed amendment agree with ideas on separation of powers favored by Madison in *The Federalist*? Explain (b) What is your judgment of this proposed constitutional amendment? (Do you agree with it? Should it be added to the Constitution? Why?)

5. Do the following statements agree with the ideas of Madison? (a) Government officials elected freely by a majority vote of the people should be trusted to have all powers in government. (b) The main check or control on the power of government is active and intelligent participation of the people.

Lesson 8: Teaching Plan
Centinel's Anti-Federalist Ideas

Objectives

Students are expected to

1) identify and comprehend the ideas of Centinel (Samuel Bryan) in *Letter I*, which pertain to separation of powers and limited government;
2) examine and explain the ideas of Centinel in *Letter I* as an example of Anti-Federalist thinking about separation of powers and limited government;
3) compare and contrast the ideas of Centinel with ideas of James Madison in *The Federalist* 47, 48, and 51;
4) take and defend a position, pro or con, on the ideas of Centinel and Madison about separation of powers and limited government.

Estimation of Time Needed to Complete This Lesson: No More Than Three Classroom Periods.

Opening the Lesson

Read the following quotation from Centinel, *Letter I*: "[T]he form of government, which holds those entrusted with power, in the greatest responsibility to their constituents [is] the best calculated for freemen." The reason is that "in such a government the people are sovereign and their sense of opinion is the criterion of every public measure."

Ask students to discuss the meaning of this statement and then indicate that it expresses a major Anti-Federalist idea: direct and persistent popular influence on government is the best means to protect liberty and prevent tyranny. Assign the introduction to this lesson, which presents an elaboration of this key Anti-Federalist idea and the differences between Anti-Federalists and Federalists on separation of powers and limited government.

Developing the Lesson

Require students to read the excerpt from Centinel, *Letter I*. Ask them to prepare answers to the four questions at the end of the document. In preparing these answers, they must refer to specific parts of the document and to parts of *The Federalist* 47, 48, and 51 (in Lesson 7).

Conduct a classroom discussion on the four questions in this assignment. Focus student attention on the text of the document throughout the discussion. Require discussants to explain and justify responses with reference to the document.

Concluding the Lesson

Ask students to read the final section of the lesson: *Roundtable Discussion on the Ideas of Centinel (Samuel Bryan) and Madison on Separation of Powers and Limited Government*. Focus attention on the three core questions about the ideas of Centinel and Madison on separation of powers and limited government.

Divide students into two groups: those favoring the ideas of Centinel and those favoring the ideas of Madison. Arrange the chairs in a circular fashion and have the two groups sit facing one another. Ask the Madison group to respond to question 1 and to justify the main points in this position as superior to the alternative position. Ask the Centinel group to listen carefully and critically. Then prompt them to react to the Madison group with questions and criticisms.

Reverse the procedure followed above by asking the Centinel group to respond to question 1 and having the Madison group serve as reactors to this presentation. Encourage give and take among the students on different sides of this discussion.

Conclude the discussion by asking all students to record their preferences for either the positions of Centinel or Madison. Tally the results of this poll and report the results to the class.

Lesson 8
Centinel's Anti-Federalist Ideas

Introduction

Centinel (pseudonym), an Anti-Federalist from Pennsylvania, wrote eighteen "Letters" to the citizens of his state during the debate on ratification of the Constitution. At that time, the Centinel *Letters* were thought to have been written by Judge George Bryan, a leading Pennsylvania judge. However, Judge Bryan's son, Samuel, claimed authorship in several private letters. Most scholars today accept his claims, but they also recognize that Samuel Bryan worked closely with his father and expressed ideas in the Centinel *Letters* that were derived from Judge George Bryan. The Centinel *Letters* were printed in the *Philadelphia Independent Gazetteer* and *Philadelphia Freeman's Journal*. They were widely reprinted and circulated in the United States. In *Letter I*, generally thought to be the best in the series, Centinel presented alternatives to Federalist arguments for separation of powers in a limited government.

In *The Federalist* 47-51, James Madison discussed separation of powers among three branches of government: legislative (making laws), executive (enforcing laws), and judicial (interpreting laws). Each branch would also have some share in the conduct of the duties of the other branches in order to check and balance the powers of government (e.g., the President's power to veto laws and the Senate's power to approve presidential appointments). (See Lesson 7 for discussion and examples of Madison's ideas on separation and sharing of powers among the three branches of government.)

Madison believed in a well-structured Constitution as the means to limit the powers of government and protect the liberty of individuals. Constitutional separation and sharing of powers among three branches of government would prevent any person from having enough power to oppress others. And each branch of government would have power to check the others to prevent tyranny. In the Madisonian model, each branch of government would be accountable for its actions to the other branches, and all three branches would ultimately, if indirectly, be accountable to the people, the source of all governmental authority.

Madison was especially concerned about limiting the power of popularly elected legislators, because they would be prone to acts of tyranny, based on the majority will, against unpopular individuals. So he insisted upon the division of the legislature into two parts (a House of Representatives and a Senate) that would check and balance the powers of each other.

Centinel and other Anti-Federalists disagreed with the Madisonian model of a well-structured government as the best way to limit the powers of government and protect the rights and freedom of the people. Rather, they would limit the government by making it directly accountable to the people, who would make sure that their representatives reflected their opinions and interests. Unlike Madison, the Anti-Federalists did not fear the tyranny of the majority. They believed that if the government directly reflected the will of the majority, then it would be a free government.

Anti-Federalists emphasized the following ideas on how to design a government that would be directly responsive and accountable to the people:

- Hold regular and frequent elections, so that representatives who do not satisfy the majority of their constituents can be voted out of office.
- Have short terms of office with strict limits on the number of times a person can be re-elected so that officials do not have time and opportunity to amass too much power and to ignore the wishes of their constituents.
- Emphasize powers of the popularly elected legislature because it is the branch most responsive to the will of the majority of the people.
- Separate the powers of the three branches strictly and simply so that the people can clearly see who is responsible for the actions of the government and can assign blame for wrongdoing.

The Anti-Federalists did NOT reject the principle of separation of powers among three branches of government. Rather, they rejected the Madisonian model of it. They criticized the Constitution of 1787 because there was too little separation and too much sharing of powers, especially by the executive and the Senate in opposition to the popularly-elected House of Representatives. Furthermore, Anti-Federalists disliked the complexity of the Madisonian model because it seemed to blur lines of responsibility.

Patrick Henry of Virginia said, "A constitution ought to be, like a beacon, held up to the public eye, so as to be understood by every man. But this government is of such an intricate and complicated na-

ture, that no man on this earth can know its real operation." Thus, according to an Anti-Federalist *Maryland Farmer*, "It can never be discovered where the fault lies."

Centinel on Separation of Powers and Limited Government

Centinel (Samuel Bryan) in his *Letter I* expressed the views of many Anti-Federalist critics of the Constitution of 1787. Examine the following excerpt from this document and identify Centinel's main ideas. Compare these ideas to the Madisonian position on separation of powers.

Centinel, *Letter I*

October 5, 1787
To the Freemen of Pennsylvania.

. . . The late [Constitutional] Convention have submitted to your consideration a plan of a new federal government—The subject is highly interesting to your future welfare— Whether it be calculated to promote the great ends of civil society, *viz.* the happiness and prosperity of the community; it behooves you well to consider. . . . All the blessings of liberty and the dearest privileges of freemen are now at stake and dependent on your present conduct. . . .

I am fearful that the principles of government [in the new Constitution will not protect the liberty of the people]. . . .

I [want] to expose the futility and counteract the baneful tendency of such principles. . . . [My opponents say] the only effectual method to secure the rights of the people and promote their welfare is to create an opposition of interests between the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third [the principle of separation of powers]. This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. [However, there is no evidence in history that such a principle of government has never been practiced successfully.] If such an organization of power were practicable, how long would it continue? not a day—for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. . . . [T]he only operative and efficient check upon the conduct of administration [of government] is the sense of the people at large [the will of the people expressed effectively to representatives in government].

. . . [T]he form of government, which holds those entrusted with power, in the greatest responsibility to their constituents [is] the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided; in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on—If you complicate the plan by various orders [separation of powers with checks and balances], the people will be perplexed and divided in their sentiments about the source of abuses or misconduct, some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men . . . elected for a short period, and necessarily excluded by rotation [changes in persons occupying places in the government] from permanency . . . you will create the most perfect responsibility for then, whenever the people feel a grievance they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended [feared] from a single legislature, and will the best secure the rights of the people. . . .

. . . I shall now proceed to the examination of the proposed plan of government [Constitution of 1787], and I trust, shall make it appear . . . that it has none of the essential requisites of a free government. . . .

. . . [T]he all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation, necessarily absorb the state legislatures and judicatories; and [destroy the thirteen State governments and the liberties of the people]. . . .

Having taken a review of the powers, I shall now examine the construction of the proposed general

government. [The legislature is divided into two parts: the House of Representatives and the Senate.]

Thus we see, the house of representatives, are on the part of the people to balance the senate, who I suppose will be composed of the *better sort*, the *well born*, etc. The number of representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents [the people who elected them]. . . .

The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest state in the union has equal weight with the great states of Virginia, Massachusetts, or Pennsylvania—The Senate, besides its legislative functions, has a very considerable share in the Executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment will lead to permanency; the members are chosen for six years, the mode is under the control of Congress, and as there is no exclusion by rotation [provision for change in the persons who hold the office], they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of state [symbolic leader without real power], unless he coincides with the views of the Senate, would either become the head of the aristocratic junto [clique] in that body or its minion [lackey]; besides, their influence being the most predominant could the best secure his re-election to office. And from his power of granting pardons, he might skreen [protect] from punishment the most treasonable attempts on the liberties of the people, when instigated by the Senate.

From this investigation into the organization of this government [Constitution of 1787], it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY. . . .

Centinel

Examine Centinel's ideas on separation of powers and limited government. Answer the questions below, which pertain to the preceding excerpt from Centinel's *Letter I*. Be prepared to justify or give reasons for answers with references to specific parts of this document.

1. According to Centinel, how can the power of government be limited to protect the liberty of the people?
2. What were Centinel's criticisms of separation of powers in the Constitution of 1787 as a means to limited government and protection of the people's liberty? Why did Centinel prefer the unicameral (one house) legislature of Pennsylvania to the bicameral (two house) legislature in the Constitution of 1787?
3. What are the similarities and differences in the views of Centinel and Madison about the influence of majorities and the popular will as means to limited government and protection of the people's liberty? (See Madison's ideas in excerpts from *The Federalist* 10 and 51 in Lessons 3 and 7.)
4. In *The Federalist* 51, James Madison says, "A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." Does Centinel agree or disagree with this idea in *Letter I*?

Roundtable Discussion

The alternative positions of Centinel (Anti-Federalist) and Madison (Federalist) on separation of powers and limited government can be focal points for a roundtable discussion. Three **core questions** are offered below for this roundtable discussion:

1. What are the essential points of Madison's position on separation of powers and limited government in *The Federalist* 47, 48, and 51?
2. What are the essential points of Centinel's position on separation of powers and limited government in *Letter I*?
3. Who has the better position—Centinel or Madison—on how to limit government to protect the rights and liberty of the people?

Discussion of these three questions in a full-class roundtable discussion should be based on the relevant documents presented in Lesson 7 (*The Federalist* 47, 48, 51) and in Lesson 8 (Centinel, *Letter I*). Responses to the questions should be explained and justified with references to specific parts of the documents.

Lesson Set V
National Security and Personal Liberty

National security and personal liberty are two major goals of constitutional government in the United States. But they are not always compatible. A government must exercise power to provide order, safety, and security for its people against internal and external threats. But if the government has too much power, then the people's liberty may be taken away by tyrants.

James Madison framed the problem of how to balance power in government to provide security and safety with limits on power to protect personal liberty: "Energy [power] in government is essential to that security against external and internal danger and to that prompt and salutary execution of the laws which enter into the very definition of good government. . . . On comparing, however, these valuable ingredients [power and security] with the vital principles of liberty, we must perceive at once the difficulty of mingling them together [in a constitutional government] in their due proportions" (*The Federalist* 37).

As Madison noted, a workable balance is difficult to achieve between power sufficient to govern effectively to provide security and safety and limits on power to protect personal liberty. Madison argued that the Constitution of 1787 could be effective in "defending liberty against power, and power against licentiousness; and in keeping every portion of power within its proper limits. . . ." But Madison's Anti-Federalist critics feared that the Constitution of 1787 would provide a government too strong for the liberty of the people.

This *Lesson Set* treats main points in the 1787-1788 debate between the Federalists and Anti-Federalists about this perennial problem of constitutional government: how to achieve and sustain acceptable amounts of both national security and personal liberty. James Madison's ideas in *The Federalist* No. 41 represent one side of this debate. The Anti-Federalist side is presented in *The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents*. This document was signed by twenty-one members of the Pennsylvania Ratifying Convention who voted against the Constitution of 1787.

This *Lesson Set* has two *Teaching Plans* and related *Lessons* for students: (a) No. 9: Madison on National Security and Personal Liberty and (b) No. 10: The "Pennsylvania Minority" on Power and Liberty.

Lesson 9: Teaching Plan
Madison on National Security and Personal Liberty

Objectives

Students are expected to

1) identify and comprehend ideas on national security and personal liberty in *The Federalist* 41;
2) analyze and evaluate ideas on national security and personal liberty in *The Federalist* 41;.
3) find examples in the Constitution of powers granted to provide national defense and security;
4) find examples in the Constitution of limits on military powers that are designed to protect rights and liberty of individuals.

Estimation of Time Needed to Complete This Lesson: No More Than Two Classroom Periods.

Opening the Lesson

Place the following diagram on the chalkboard.

Security_____ / _____**Liberty**
(Point 1) (Point 2)

Tell students that this diagram represents a continuum between the extremes of national security and liberty. Both national security and liberty are important ends of a free government. Indicate that the mark at the midpoint of the continuum represents a balance between Points 1 and 2 on the diagram.

Tell students that Federalists and Anti-Federalist did not argue for extreme emphasis on either national security or liberty. Rather, both sides debated about where to draw the line between the extreme positions represented by Point 1 and Point 2. However, in contrast to the Federalists, Anti-Federalists tended to place more emphasis on personal liberty and less emphasis on power in the national government.

A free society needs both national security and personal liberty, but these goals are often in conflict. Ask why? During this discussion, point out that too much emphasis on liberty, for example, could threaten national security and conversely, too much emphasis on national security could destroy the liberty and rights of persons. Ask students to think of examples of negative consequences associated with too much emphasis on either side of the midpoint in the diagram. Indicate that too much emphasis on national security could lead to tyranny by the government over the people with a consequent loss of individual rights and freedoms. Too much emphasis on personal liberty could lead to disorder and fragmentation of society (anarchy), with the consequent loss of security and safety for property and liberty of individuals. End this discussion by telling students that a free society is always challenged by the need to find a workable balance between the extremes of unlimited liberty of the people and unlimited power by government to provide national security.

Have students read the introduction to the lesson to review ideas about national security with liberty and the relationships between these values in a free society. This introduction sets a context for reading about national security with liberty in an excerpt from *The Federalist* 41 by James Madison.

Developing the Lesson

Have students read the excerpt from *The Federalist* 41 and respond to the first question at the end of the document. The following statements on this list agree with Madison in *The Federalist* 41: a, b, d, e, f, g, j, l, m, n. Require students to justify their answers with references to the document.

You might wish to select three or four provocative statements from this exercise as foils for discussion about civic values. For example, you might ask students to agree or disagree with statements d, g, and m.

Have students turn to items 2-5 at the end of the lesson. Ask them to complete these items in preparation for classroom discussion.

Concluding the Lesson

Conduct a classroom discussion on items 2-5 in the set of questions at the end of the lesson. Require students to support or justify answers by referring to pertinent parts of *The Federalist* 41 by James Madison. In general, ask students to give reasons for their answers and encourage students to question and challenge one another to ask for justification or support for answers. In this discussion, highlight the inevitable tension between the concerns for security and liberty in a free society. Identify and discuss issues raised by these tensions. Point out that

the tensions and issues associated with national security and personal liberty are distinguishing characteristics of a free society.

NOTE: Other essays in *The Federalist* that pertain to the issue of maintaining national defense/security and personal liberty are No. 4 (John Jay) and numbers 23, 24, and 26 (Alexander Hamilton). Interested students might be referred to these *Federalist Papers* to examine similarities and differences in the ideas of Hamilton, Jay, and Madison about maintaining both national defense and personal liberty.

Lesson 9
Madison on National Security and Personal Liberty

Introduction

The Preamble to the Constitution of the United States says: "We the People of the United States, in Order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

James Madison and other framers of the Constitution of 1787 agreed that a national government has the fundamental responsibility of defending the nation and maintaining security. National security involves the ability of a nation to protect its borders and territory against invasion or control by foreign powers. In 1787, for example, the framers of the Constitution were concerned about the need to defend their new nation from conquest or domination by powerful European nations, such as Britain, France, and Spain, which held territory in the Western Hemisphere.

National security also involves a nation's ability to maintain law, order, and stability ("insure domestic tranquility"). Harold Brown, Secretary of Defense under President Carter, defines national security as "the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to protect its nature, institutions, and governance from disruption from outside; and to control its borders."

James Madison argued in *The Federalist* that the Constitution of 1787 would be a bulwark of national defense and security by providing a federal government with enough power to maintain order internally and protect the nation against external threats. Madison also argued that the Constitution would limit the powers of government sufficiently to protect individual rights and freedoms.

In *The Federalist* 41, Madison pointed to constitutional limits on powers of the legislative and executive branches of government, which were designed to secure civil liberties and rights and prevent tyranny. In particular, he stressed the civilian control of military forces provided by the Constitution. For example, the President, a civilian, is the commander in chief of the armed forces, and the Congress decides how much money should be provided to support the nation's army.

Nonetheless, the Anti-Federalists feared basic freedoms might be lost or unduly limited by leaders more concerned with national defense and security than with civil liberties and rights. They preferred the more limited government of the Articles of Confederation to the more powerful government of the Constitution of 1787.

The Federalist 41

In *The Federalist* 41, Madison discussed how to have national defense and security without destroying personal liberty. He argued that the Constitution of 1787 provided government strong enough for national defense and security and limited enough for personal liberty.

***The Federalist* No. 41 (Madison)**

January 19, 1788
To the People of the State of New York:

. . . Is the . . . power of the general government greater than ought to have been vested in it? . . .

. . . [I]n every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. . . . [I]n all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse [interaction] with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers.

The powers falling within the *first* class are those of declaring war . . . of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

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Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils [national government]. . . .

. . . With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own government and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will . . . be ever determined by these rules and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. . . .

. . . A standing force . . . is a dangerous, at the same time that it may be a necessary, provision. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops . . . exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. . . .

Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added [the provision in Article I that Congress has power, during a two year period, to provide or withhold funds for the army]. . . .

. . . [T]he Constitution has provided the most effectual guards against danger from [a standing army or permanent military establishment that might destroy a free government and a free society]. . . . [N]othing short of a Constitution fully adequate to the national defense and the preservation of the Union can save America [from internal and external dangers that would destroy national security and deprive the people of their liberty]. . . .

Publius

Examining Madison's Ideas in *The Federalist* 41

Use evidence from The Federalist 41 in responding to the following items. Support and explain answers by referring to specific parts of the document.

1. Which of the following statements agree with ideas in *The Federalist* 41? Place a checkmark in the space next to each statement that agrees with ideas in the preceding document.

_____ a. National unity and strength are deterrents to attack by a foreign nation.
_____ b. A fundamental purpose of any national government is providing security for the nation against threats from foreign powers.
_____ c. Tyranny is acceptable if it is imposed in order to defend the nation and provide national security.
_____ d. A military establishment is both necessary and dangerous to the protection of civil liberties and rights.
_____ e. There should be constitutional limits upon power exercised by military leaders.
_____ f. The Constitution provides for civilian control of military forces to control abuses of power by military leaders.
_____ g. A nation without an effective military force is in danger of losing its security and freedom.
_____ h. A nation without a standing army will have more freedom than a nation with a strong military establishment.
_____ i. The more limited a national government is, the more free the people will be who live under the government.
_____ j. A national government should have sufficient power to maintain armed forces to achieve purposes desired by the people living under the government's authority.
_____ k. National defense and security are more important than liberty as basic purposes of a national government.
_____ l. The "power of the purse" is an effective means for controlling the power of the military on behalf of the people, which is granted to Congress in the Constitution.
_____ m. Constitutional government in a free society is designed to balance power needed for national defense and security with limits on power needed to protect liberties and rights of the people.
_____ n. A fundamental purpose of national government in a free society is to seek both security and liberty for the people it serves.

2. According to Madison, what are the responsibilities of a national government in regard to national security?

3. What are Madison's ideas about dangers to personal liberty from the exercise of power by government to provide national security?

4. According to Madison, how would government under the Constitution of 1787 provide both national security and protection of personal liberty? Refer to Article I, Sections 7, 8, 9 and Article II, Sections 1 and 2 of the Constitution. (a) Identify powers and duties of the national government to provide national defense and security. (b) Identify limitations on military power that are designed to maintain civilian control of the military and to protect personal liberty against abuses of power by military leaders.

5. To what extent do you agree with the Madisonian position on national security and personal liberty in a constitutional government? Select one of the following choices and provide reasons in support of your response.

(a) strongly agree (b) agree
(c) strongly disagree (d) disagree

Lesson 10: Teaching Plan
The "Pennsylvania Minority" on Power and Liberty

Objectives

Students are expected to

1) identify and comprehend ideas on power and liberty in constitutional government in a report by the "Pennsylvania Minority;"
2) analyze and evaluate ideas of the "Pennsylvania Minority;"
3) select and defend a position, pro or con, on constitutional amendments proposed by the "Pennsylvania Minority."

Estimation of Time Needed to Complete This Lesson: No More Than Three Classroom Periods.

Opening the Lesson

Read the proposed constitutional amendment below, which was put forward by Anti-Federalists from Rhode Island: "As standing armies in time of peace are dangerous to liberty and ought not to be kept up, except in cases of necessity; and as at all times the military should be under strict subordination to the civil power—that therefore no standing army, or regular troops, shall be raised or kept up in time of peace."

Point out that this proposed amendment is a typical example of Anti-Federalist thinking about limits on military powers of the United States government. Ask students how this amendment, if accepted, would have changed the Constitution of 1787. If they had lived during the debate on ratification of the Constitution, would they have supported this proposition? Would this proposed amendment be a good idea in today's world? Why or why not?

Ask students to read the introduction to the lesson and the excerpt from the address by the "Pennsylvania Minority." This document presents an Anti-Federalist position on limits to military powers.

Developing the Lesson

Assign the three questions about the document, *The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents.* The questions pertain directly to two proposed amendments to the Constitution of 1787 about limitation of military powers.

Conduct a classroom discussion on the three questions. Require students to support answers with references to the Pennsylvania Convention document.

Concluding the Lesson

Ask students to read the final section of the lesson, which sets up a proposition for debate—Resolved: The two amendments to the Constitution about limits on military powers, proposed by the "Pennsylvania Minority," should be ratified.

Divide the class into two groups: (1) Pro—the "Pennsylvania Minority" position and (2) Con—the position of James Madison in *The Federalist* 41. Give each group time to discuss its position, to select a three-person team to represent it in a debate, and to plan a strategy for the forthcoming debate.

Conduct a debate on the resolution. Use the following guidelines to structure the debate.

- Have the Pro side present its position first; the Con group follows; each team has a maximum of twelve minutes to present its position.
- The Pro side may ask three questions of the Con side, then the Con side may ask three questions of the Pro side; establish a two minute time limit for answering each question.
- Open the discussion to the full class. Students may speak in favor of their side in the debate or against the other side. Or they may ask questions of members of the two teams at the front of the class. The time limit for each speaker is two minutes.
- Conclude the activity by asking students to record their opinions, for or against, on the resolution in the debate. Report the results to the class.

Lesson 10
The "Pennsylvania Minority" on Power and Liberty

Introduction

On December 12, the Pennsylvania Ratifying Convention voted for the Constitution, 46 to 23. Soon afterwards, twenty-one of the minority at the convention signed a statement of dissent that appeared in the *Pennsylvania Packet and Daily Advertiser* on December 18, 1787. The primary author of this statement was probably Samuel Bryan, the son of Judge George Bryan, a leading Anti-Federalist.

The address of the "Pennsylvania Minority" consists of three main parts: (1) a narrative of events associated with the Pennsylvania Ratifying Convention, (2) a list of proposed amendments to the Constitution of 1787, and (3) criticisms of the Constitution of 1787. In general, the "Pennsylvania Minority" faulted the Constitution for its threat to personal liberty because of insufficient limits on the powers of the government of the United States.

The criticisms are summarized in the following list:

- The excessive powers of the U.S. government would enable it to dominate and eventually destroy the several state governments; if so personal rights and liberty would be lost.
- Unlike the state constitutions, the Constitution of 1787 lacked a bill of rights to limit the government and protect personal liberties.
- Unlike the state constitutions, the U.S. Constitution did not provide for adequate representation and participation of the people in their government.
- The proposed U.S. Constitution granted power to the national government to raise and maintain a large standing army in peacetime and to control the state-level armed forces, the militia; this military power could be used to destroy personal liberty because of insufficient constitutional limits or safeguards against it.

The "Pennsylvania Minority" argued that a national government under the proposed U.S. Constitution would rely upon military power to enforce unpopular laws, such as new taxes. Thus personal liberty would be eroded and eventually destroyed.

Address of the "Pennsylvania Minority"

The following excerpt from the address of the "Pennsylvania Minority" emphasizes Anti-Federalist ideas on military powers in the Constitution of 1787 and the threat posed by them to personal liberty. Examine these ideas and compare them to the alternative position of Madison in *The Federalist* 41 (see Lesson 9).

The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents

December 18, 1787

. . . From the foregoing investigation, it appears that the Congress under this constitution will not possess the confidence of the people, which is an essential requisite in a good government, for unless the laws command the confidence and respect of the great body of the people, so as to induce them to support them, when called on by the civil magistrate, they must be executed by the aid of a numerous standing army, which would be inconsistent with every idea of liberty; for the same force that may be employed to compel obedience to good laws, might and probably would be used to wrest from the people their constitutional liberties. The framers of this constitution appear to have been aware of this great deficiency; to have been sensible that no dependence could be placed on the people for their support: but on the contrary, that the government must be executed by force. They have therefore made a provision for the purpose in a permanent STANDING ARMY and a MILITIA that may be subjected to as strict discipline and government.

A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of the most oppressive taxes, and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia may be made instrumental to the destruction of all liberty, both public and private; whether of a personal, civil or religious nature.

First, the personal liberty of every man probably from sixteen to sixty years of age may be destroyed by the power Congress have in organizing and governing of the militia. As militia they may be subject to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind, and to death itself, by the sentence of a court martial: To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

Secondly, the rights of conscience may be violated, as there is no exemption of those persons who are conscientously scrupulous of bearing arms. . . .

Thirdly, the absolute command of Congress over the militia may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will no doubt be successful in subduing their liberty and independency. . . . Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow citizens, and on one another. This power can be exercised not only without violating the constitution, but in strict conformity with it; it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burthensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department: judges, collectors, tax-gatherers, excisemen and the whole host of revenue officers will swarm over the land, devouring the hard earnings of the industrious. . . .

We have . . . confined our objections to the great and essential defects; the main pillars of the constitution; which we have shown to be inconsistent with the liberty and happiness of the people. . . .

Signed by Twenty-One Members of the Pennsylvania Ratifying Convention, Who Voted Against the Constitution of 1787.

Examine the "Pennsylvania Minority's" ideas on power and personal liberty in a constitutional government. Answer the questions below, which pertain to the preceding excerpt from *The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents*. The questions stem from the following proposed amendments to the Constitution of 1787, which were advocated by the "Pennsylvania Minority."

a. That . . . as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up: and that the military shall be kept under strict subordination to and be governed by the civil powers.

b. That the power of organizing, arming and disciplining the militia . . . remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

1. What were the "Pennsylvania Minority's" criticisms of military powers in the Constitution of 1787?

2. Would these two proposed amendments correct faults in the Constitution emphasized by the "Pennsylvania Minority" in the preceding document? Explain

3. What do these two proposed amendments reveal about the "Pennsylvania Minority's" views on (a) powers of state governments in relationship to the U.S. government, (b) national security as a major goal of government, and (c) personal liberty as a major goal of government?

Lesson Set VI
James Madison, *The Federalist*, and the Bill of Rights

Beginning in May 1787, the delegates from the thirteen states met at the Federal Convention in Philadelphia to revise the defective Articles of Confederation. James Madison from Virginia led a group of delegates to press for a larger purpose—the establishment of a strong central government. On September 17, 1787, the Convention completed its work and proposed to the states a federal form of government based upon popular sovereignty. Their plan was incorporated in a written constitution.

The idea that a bill of rights should be included in the Constitution of 1787 did not have much support, when it was suggested by George Mason of Virginia during the final days of the Convention. On September 12, 1787, just five days before adjournment, Mason remarked that he "wished the plan [the Constitution] had been prefaced by a Bill of Rights." Mason knew that eight states had Bills of Rights in their recently drafted state constitutions. He felt that a Bill of Rights could be drafted in a few hours using these existing bills of rights as models.

Elbridge Gerry of Massachusetts motioned and Mason seconded that a committee be established to draft a Bill of Rights. The Delegates failed to grasp the seriousness of Gerry's and Mason's proposal. After very little debate, the motion was defeated. The persuasive argument seems to have been offered by Roger Sherman of Connecticut, the only delegate whose opposition to the Bill of Rights is recorded, when he said, "The State Declarations of Rights [bills of rights] are not repealed by the Constitution; and being in force are sufficient."

The final document was signed two days later with only Mason, Gerry, and Randolph refusing to sign. The fight for a Bill of Rights had just begun. The Anti-Federalists—those individuals opposed to the ratification of the Constitution—made the absence of a Bill of Rights the centerpiece of their attack. James Madison moved from an initial view at the Constitutional Convention that a Bill of Rights was unnecessary to becoming a supporter of such rights in the first session of Congress.

This *Lesson Set* explores important questions about the addition of a Bill of Rights to the Constitution of 1787. It also includes a comprehensive chronology of events associated with James Madison, *The Federalist Papers*, the ratification debate, and the Bill of Rights.

This *Lesson Set* includes two *Teaching Plans* and accompanying *Lessons* for students: (a) No. 11: Alternative Ideas on a Bill of Rights and (b) No. 12: Chronology of Major Political Events, 1787-1791.

Lesson 11: Teaching Plan
Alternative Ideas on a Bill of Rights

Objectives

Students are expected to

1) know and appreciate the arguments of advocates and opponents of including the Bill of Rights in the Constitution;
2) understand the primary political concepts and ideas included in the Bill of Rights;
3) know and appreciate the political vocabulary and concepts upon which the Founders based their conception of government and society;
4) interpret and analyze primary and secondary sources on the Bill of Rights, James Madison, and the Founders;
5) construct a thesis or central argument in writing on relevant interpretative questions concerning the Bill of Rights, James Madison, the Founders, ratification of the Constitution, and the politics in the new republic from 1787 to 1791;
6) support a thesis with sufficient evidence and logic from primary as well as secondary readings;
7) participate knowledgeably in class discussions on the Bill of Rights, James Madison, the ratification of the Constitution, and the politics in the new republic from 1787 to 1791.

Estimation of Time Needed to Complete This Lesson: No More Than Five Classroom Periods.

Opening the Lesson

Assign the relevant pages in your textbook on the Constitutional Convention, the ratification of the document, and the passage of a Bill of Rights. Ask students to discuss why the Bill of Rights was adopted, according to the textbook. (Allow students about fifteen to twenty minutes to discuss this question.)

Divide the class into small groups of four or six members, depending on the size of the class. Provide each group with this question: In 1787-88, was the inclusion of a Bill of Rights in the United States Constitution a necessity?

Once a group receives the question, it is further divided into two or three students arguing yes or two or three student arguing no. Each student writes a one-page position paper, based upon the primary documents and additional reading, if possible, defending his or her side of the question.

Developing the Lesson

Show students the narrative descriptions and primary documents in this lesson that pertain to the assigned question. Inform students that their one-page essays are due in two days.

Provide time in class for students to discuss the assignment in their small groups. The teacher should circulate among the groups to answer questions and direct students in their conduct of this assignment. Students may also want to use class time for reading, planning, and writing to carry out this assignment.

Concluding the Lesson

During the final two days of the lesson, conduct classroom debates in response to the assigned question. Select two or three students to present the affirmative argument and two or three students to present the negative side.

The preferred debate format involves (1) twenty minutes for the first affirmative presentation; (2) three minutes of questions from the negative; (3) twenty minutes for the first negative presentation; (4) three minutes of questions from the affirmative; and (5) each side having twenty minutes to respond to evidence and arguments from their opponents as well as offering new evidence to rebuild their initial arguments.

Use one class period for steps one through four. Use a second class period to involve other members of the class in the debate. Students who have prepared arguments on the positive side should support this team in the debates. Students who have prepared arguments on the negative position should join this side of the debate. This approach allows the entire class to be involved in the debates.

Lesson 11
Alternative Ideas on a Bill of Rights

Introduction

In 1787-88, was the inclusion of a Bill of Rights in the Constitution a necessity? Consider the arguments of Federalists and Anti-Federalists in response to this question.

The abbreviated debate about the Bill of Rights in the closing days of The Constitutional Convention in Philadelphia revealed some of the emerging arguments used by the Federalists and Anti-Federalists in the ratification conventions held in each state. The Federalists, including James Madison, seemed to view the efforts to include a Bill of Rights in the written Constitution as an effort to prevent the adoption of a new government.

George Mason harbored great fears about the establishment of a powerful central government capable of destroying state powers. In the days before he expressed a desire for a Bill of Rights, he declared, "that he would sooner chop off his right hand than put it to the Constitution as it now stands." His major worry seems to have been the commerce power of the national government. This power could be used to destroy the staple crop economy of the South. He found the control of commerce by a simple majority (51 per cent) vote by the Congress as "an insuperable objection" to the acceptance of the Constitution. He advocated that all commercial legislation require a two-thirds vote of both bodies. This approach was not included in the final document.

Once the Convention voted on September 17, 1787 to submit the Constitution to the several states for ratification, Mason and several other opponents of the new government pursued a strategy of advocating a second convention to correct flaws and oversights in the existing proposal. Their aim was to convene a second convention and protect state powers by destroying powers granted to the central government.

Arguments for a Bill of Rights

First, consider the arguments of those men advocating that a Bill of Rights should be included in the Constitution. In a letter, published in several newspapers during the autumn of 1787, George Mason stated his reservation about the new Constitution due to an absence of a Bill of Rights.

George Mason's Objections to the Constitution
November 1787

There is no declaration of rights: and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights, in the separate states, are no security. Nor are the people secured even in the enjoyment of the benefits of the common law, which stands here upon no other foundation than it having been adopted by the respective acts forming the constitutions of the several states. . . .

Under their own construction of the general clause at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their power as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them; or the people for their rights.

There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil causes, nor against the danger of standing armies in time of peace. . . .

Mason's worry about "the general clause at the end of the enumerated powers" and "the laws of the general government being paramount to the laws and constitutions of the several states" refers to Article I, Section 8, Provision 18 and Article VI of the new Constitution. These provisions, along with the clause granting Congress the power to "promote the general welfare," created alarm in the defenders of state authority and the rights of the people. The relevant provisions are presented below.

The Constitution of the United States

Article I, Section 8, Provision 18

The Congress shall have Power To . . . make all Laws, which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

These broad grants of power to the sovereign Federal Union made the protections in a Bill of Rights an imperative for the Anti-Federalists. An Anti-Federalist, the Federal Farmer, shaped the argument as one concerning the rights of all people.

Letter II
From the Federal Farmer to the Republican

October 9, 1787
Dear Sir,

. . . There are certain unalienable and fundamental rights, which informing the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm—These rights should be made the basis of every constitution; and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only.—I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever . . .

The Federal Farmer

On November 1, 1787, an Anti-Federalist, using the pseudonym of Brutus, wrote in *The New York Journal* that the rights of the people could ONLY be protected by a Bill of Rights functioning as an integral part of the new constitution and government.

Essay II (Brutus)

November 1, 1787
To the Citizens of the State of New York

. . . Those who have governed have been found in all ages active to enlarge their powers and abridge [limit] the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin [England] is an eminent example of this. Their Magna Carta and Bill of Rights have long been the boast as well as the security of that nation. I need say no more I presume, to an American, than that this principle is a fundamental one in all the constitutions of our own states [the 13 United States of America]; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. . . . It is therefore the more astonishing that this grand security to the rights of the people is not to be found in this Constitution. . . .

. . . The powers, rights, and authority granted to the general government by this Constitution are as complete, with respect to every object to which they extend, as that of any state government. It reaches to every thing which concerns human happiness—Life, liberty, and property are under its control. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits [by a Bill of Rights] as in that of the state government. . . .

. . . Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a declaration of rights? It certainly ought.

So clear a point is this that I cannot help suspecting that persons who attempt to persuade people that such reservations were less necessary under this Constitution than under those of the states are willfully endeavoring [trying] to deceive, and to lead you into an absolute state of vassalage.

Brutus

Federalist Ideas on a Bill of Rights

The publication of Brutus' essay alarmed James Madison and Alexander Hamilton and produced a Federalist defense of the new Constitution without a Bill of Rights.

The Federalist justification for not including a Bill of Rights centered on contentions that individual rights were protected by the state constitutions, that the new government possessed only enumerated powers and other protections were not affected, that such amendments might weaken the federal government, and that such provisions might prove dangerous. The greatest danger the Federalists identified was that an imperfect enumeration of individual rights would imply that those excluded existed at the pleasure of the government.

James Madison speaking at the Virginia Ratification Convention stated, "If an enumeration be made of all our rights, will it not be implied that everything omitted is given to the general government. An imperfect (incomplete) enumeration is dangerous."

Earlier, on October 6, 1787, James Wilson of Pennsylvania discussed the danger of adding a Bill of Rights to the Constitution.

James Wilson, State House Speech
October 6, 1787

. . . When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question respecting the jurisdiction of the House of Assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating federal powers, another criterion was necessarily introduced, and the congressional power is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of the union. Hence, it is evident, that in the former case everything which is not reserved is given; but in the latter the reverse of the proposition prevails, and everything which is not given is reserved.

This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights a defect in the proposed constitution; for it would have been superfluous and absurd to have stiplulated with a federal body of our own creation, that we should enjoy those privileges of which we are not divested, either by the intention or the act that has brought the body into existence. For instance, the liberty of the press, which has been a copious source of declamation and opposition—what control can proceed from the Federal government to shackle or destroy that sacred palladium of national freedom? If, indeed, a power similar to that which as been granted for the regulation of commerce had been granted to regulate literary publications, it would have been as necessary to stipulate that the liberty of the press should be preserved inviolate, as that the impost should be general in its operation. . . . In truth, then, the proposed system possesses no influence whatever upon the press, and it would have been merely nugatory to have introduced a formal declaration upon the subject—nay, that very declaration might have been construed to imply that some degree of power was given, since we undertook to define its extent. . . .

The Federalist position was developed further in *The Federalist* 84, published by Alexander Hamilton of New York on May 28, 1788.

***The Federalist* No. 84 (Hamilton)**

May 28, 1788
To the People of the State of New York:

. . . [Critics of the Constitution object to it because they say it] contains no bill of rights. . . .

. . . I answer that the Constitution proposed by the convention contains . . . a number of such provisions.

Independent of those which relate to the structure of the government [separation of powers among three branches of government, a system whereby each branch of government can check the power of the other branches, and division of power between the national government and the state governments] we find the following. . . . [Hamilton lists parts of the Constitution of 1787 that include provisions for protection of rights and liberties of the people, such as Article I, Sections 9 and 10 and Article 3, Sections 2 and 3.]

I . . . affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution but would even be dangerous. They would contain various exceptions to powers which are not granted; and, on this very account, would afford a . . . pretext to claim more than were granted. For why declare that things shall not be done which there is not power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident

that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason that the . . . provision against restraining the liberty of the press afforded a clear implication that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to [those wanting to usurp power on the pretext of guarding peoples' liberties] by the indulgence of an injudicious zeal for bills of rights. . . .

. . . What signifies a declaration that "the liberty of the press shall be inviolably preserved?" What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and . . . its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here . . . must we seek for the only solid basis of all our rights. . . .

. . . The truth is . . . that the Constitution is itself . . . A BILL OF RIGHTS. . . . Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structures and administration of the government? This is done in the most ample and precise manner in the plan of the convention. . . . Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This . . . has also been attended to . . . in the same plan. Adverting . . . to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. . . . It may be said that it does not go far enough. . . .

Publius

Madison Backs a Bill of Rights

In 1787 and 1788, the Bill of Rights emerged as the most emotional issue in the debates about the ratification of the Constitution. The Anti-Federalists created alarm throughout the several states because it seemed that the liberties of the people were at risk. While the issue provided much needed unity to the Anti-Federalists, it ultimately contributed to their loss in the fight against the supporters of the Constitution. Madison, Hamilton, Wilson, and the Federalists slowly recognized that adding a Bill of Rights would cripple the Anti-Federalists opposition to the adoption of the Constitution.

James Madison's skill as a politician is manifest in his transformation from opponent of its inclusion to the leader of the effort in the first session of Congress to include a Bill of Rights in the Constitution. The Anti-Federalist faction in Virginia, led by Patrick Henry, prevented Madison from serving in the Senate and slated James Monroe as his opponent for a seat in the House of Representatives. In a very tight race, won by less than four hundred votes by Madison, he promised his constituents that if elected he would introduce a Bill of Rights in the first session of Congress.

At the first session of Congress in 1789, Madison proposed several amendments to the Constitution, which would become a Bill of Rights.

> There have been objections of various kinds . . . against the Constitution, but I believe the great mass of the people who opposed it, disliked it because it did not contain effectual [guarantees against] encroachments on particular rights, and those safe-guards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our follow citizens think these securities necessary.

A majority in Congress seemed ready to support most of Madison's proposals, calling for only minor changes. Congress approved twelve amendments. More than two-thirds of the members voted for the amendments, as required by Article V of the Constitution. Congress then sent the amendments to the states in accordance with Article V. After three-fourths of the states ratified ten of these amendments (December 15, 1791), they became part of the Constitution. These amendments to the Constitution (I-X) are called the Bill of Rights.

Questions for Discussion and Debate

The Core Question: In 1787-88, was the inclusion of a Bill of Rights in the Constitution a necessity?

1. What were the responses of the following Anti-Federalists to this core question?
   a. George Mason
   b. The Federal Farmer
   c. Brutus
2. What were the responses of the following Federalists to this core question?
   a. James Wilson
   b. Alexander Hamilton
   c. James Madison
3. What is your position in response to the core question?

Lesson 12: Teaching Plan
Chronology of Major Political Events, 1787-1791

Objectives

Students are expected to

1) use a timetable of events to locate facts;
2) use a timetable to answer questions about the chronology of main events associated with the debate about ratification of the Constitution of 1787;
3) arrange events in chronological order;
4) match events with the dates of those events;
5) interpret facts presented in a chronological list.

Estimation of Time Needed to Complete This Lesson: No more than One Classroom Period.

Opening the Lesson

Ask students to read the events in the timetable. Invite them to raise questions in regard to events about which they are curious or confused. Discussion of these questions can be related to material covered in Lessons 1 and 2. Assign activities 1 and 2 at the end of the lesson.

Developing the Lesson

Have students use the timetable to complete Activities 1 and 2 at the end of the lesson. Discuss correct answers with students. See the answers below.

Concluding the Lesson

Have students complete the activity at the very end of the lesson, which is titled "Interpreting Facts." Discuss answers with students. This activity involves interpretive and speculative responses. There may be reasonable differences in the answers of students. Probe for reasons in support of responses.

Answers to Activities 1 and 2

1. Events below are listed in chronological order.
   g. first essay by Brutus was printed.
   a. first *Federalist Paper* was printed.
   c. Madison wrote the first of his 29 *Federalist Papers* (*Federalist* 10).
   e. New Hampshire ratified the Constitution.
   b. Virginia ratified the Constitution.
   d. Madison presented a proposed Bill of Rights to the first session of Congress under the Constitution.
   f. Rhode Island ratified the Constitution.
2. Answers to the Matching Activity (Roman Numerals That Belong in the Spaces in List B).
   1. V
   2. VII
   3. III
   4. VI
   5. I
   6. IV
   7. IX
   8. II
   9. VIII
   10. X

Lesson 12
Chronology of Major Political Events, 1787-1791

September 17, 1787: Conclusion of the Federal Convention; each of the 12 state delegations voted to approve a final copy of a proposed Constitution of the United States.

September 20, 1787: The Congress of the United States received the proposed Constitution.

September 28, 1787: Congress voted to send the Constitution to the legislature of each state; Congress asked each state to either approve or reject the proposed Constitution.

October 5, 1787: The first of eighteen Anti-Federalist articles by Centinel (penname for Samuel Bryan) was printed in the *Philadelphia Independent Gazette*.

October 8, 1787: The first in a series of letters by The Federal Farmer was written in support of the Anti-Federalist cause. These letters were published in a pamphlet and circulated widely in the United States. Until recently, most scholars believed that The Federal Farmer was Richard Henry Lee of Virginia. Scholars today are uncertain about the identity of the author of these letters.

October 18, 1787: The first in a series of 16 Anti-Federalist essays by Brutus (pseudonym) appeared in the *New York Journal*; these essays were representatives of many Anti-Federalist writings published throughout the United States during the debates on the Constitution; although the identity of Brutus is unknown, most scholars today believe he was Robert Yates of New York.

October 27, 1787: The first *Federalist* paper written by Alexander Hamilton appeared in a New York City newspaper, *The Independent Journal*; this was the first in a series of 85 essays under the pseudonym Publius (51 by Hamilton) to explain the Constitution of 1787 and argue for ratification of it.

October 31, 1787: The second *Federalist* paper was published; it was the first of five essays written by John Jay under the pseudonym of Publius.

November 22, 1787: The tenth *Federalist* paper was published; this was the first of 29 essays written by James Madison under the pseudonym of Publius.

December 7, 1787: Delaware was the first state to ratify the Constitution; the vote was 30-0.

December 12, 1787: Pennsylvania ratified the Constitution by a 46 to 23 vote.

December 18, 1787: New Jersey ratified the Constitution by a 38-0 vote. Twenty-one members of the Pennsylvania Ratifying Convention signed an Anti-Federalist statement: *The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents*. Printed first in the *Pennsylvania Packet*, it later was reprinted and circulated widely in Pennsylvania and other states. The probable author of this statement was Samuel Bryan.

January 2, 1788: Georgia was the fourth state to ratify the Constitution; the vote was 26-0.

January 9, 1788: Connecticut ratified the Constitution by a 128 to 40 vote.

February 6, 1788: Massachusetts was the sixth state to ratify the Constitution; the vote was 187-168; a Federalist victory was secured by promising to amend the Constitution to guarantee certain rights of the people and the states.

March 22, 1788: Volume I of *The Federalist* was published by McLean and Company of New York City. It included 36 essays, which had previously appeared in New York newspapers.

March 24, 1788: In a state-wide referendum, voters of Rhode Island rejected the Constitution; the vote was 2,711 to 239.

April 2, 1788: *The Federalist* No. 77 by Alexander Hamilton was published; this was the last essay in this series to appear initially in a newspaper (eight more essays would be written to complete the series).

April 28, 1788: Maryland was the seventh state to ratify the Constitution; the vote was 63-11.

May 23, 1788: South Carolina ratified the Constitution by a vote of 149-73; amendments were proposed.

May 28, 1788: Eight *Federalist Papers* (numbers 78-85 by Hamilton) appeared in print for the first time in Volume II of *The Federalist*, which was published by McLean and Company (Volume II included numbers 37-85); the complete collection of *The Federalist Papers* was included in two volumes.

June 21, 1788: New Hampshire was the ninth state to ratify the Constitution; the vote was 57-47; amendments were proposed.

June 25, 1788: Virginia ratified the Constitution by a 89-79 vote.

June 27, 1788: The Virginia Ratifying Convention proposed amendments to the Constitution; these amendments, including a Bill of Rights, were advanced initially by Anti-Federalist leaders (for example, George Mason and Patrick Henry); Federalist

leaders (James Madison, for example) pledged to add a Bill of Rights to the Constitution.

July 2, 1788: Cyrus Griffin, the president of Congress, recognized that a minimum of nine states had ratified the Constitution, as required by Article VII of the document.

July 26, 1788: New York was the eleventh state to ratify the Constitution; the vote was 30-27; amendments were proposed.

August 2, 1788: The North Carolina Convention refused to ratify the Constitution; amendments were proposed.

October 10, 1788: Congress under the Articles of Confederation completed its last day of existence; it was disbanded to make way for a new government under the Constitution of 1787.

April 1, 1789: Members of the House of Representatives, elected under the Constitution, met and began to organize their branch of the new Congress.

April 6, 1789: Members of the Senate, elected under the Constitution, met and began to organize their branch of the new Congress.

April 30, 1789: George Washington, elected as the first President under the new Constitution, was inaugurated.

June 8, 1789: James Madison, Representative from Virginia, presented a Bill of Rights as a set of amendments to the Constitution.

September 25, 1789: Congress approved amendments to the Constitution (a Bill of Rights) and sent them to the states for ratification.

November 21, 1789: North Carolina became the twelfth state to ratify the Constitution; the vote was 194-77.

May 29, 1790: Rhode Island ratified the Constitution, the last of the original thirteen states to do so; the vote was 34-32.

December 15, 1791: Virginia was the eleventh state to ratify ten amendments to the Constitution; these amendments became part of the Constitution, the Bill of Rights.

Using Facts About Chronology

1. **Arranging Events in Chronological Order.** The items in the list below are NOT in chronological order. Rearrange these items in chronological order (the order in which they happened). Write your list of items correctly, in chronological order, on a separate piece of paper. Refer to the list of events in the preceding timetable to help you complete this activity.

Scrambled List of Ten Events

a. First *Federalist Paper* was printed.
b. Virginia ratified the Constitution.
c. Madison wrote the first of his 29 *Federalist Papers* (*Federalist* 10).
d. Madison presented a proposed Bill of Rights to the first session of Congress under the Constitution.
e. New Hampshire ratified the Constitution.
f. Rhode Island ratified the Constitution.
g. First essay by Brutus was printed.

2. **Matching Activity.** Match dates in LIST A with the correct events in LIST B. Write the numeral next to a date in LIST A in the correct space next to an event in LIST B.

LIST A

I October 27, 1787
II November 21, 1789
III May 28, 1788
IV April 30, 1789
V July 26, 1788
VI June 25, 1788
VII December 7, 1787
VIII September 28, 1787
IX September 17, 1787
X March 22, 1788

LIST B

_____ 1. New York ratified the Constitution.
_____ 2. Delaware ratified the Constitution.
_____ 3. Volume 2 of *The Federalist* was published.
_____ 4. Virginia ratified the Constitution.
_____ 5. *Federalist* 1 was published.
_____ 6. Washington became President under the Constitution.
_____ 7. The Constitutional Convention ended.
_____ 8. North Carolina ratified the Constitution.
_____ 9. The Confederation Congress sent the Constitution to the legislatures of the thirteen states.
_____ 10. Volume 1 of *The Federalist* was published.

Interpreting Facts in a Timetable

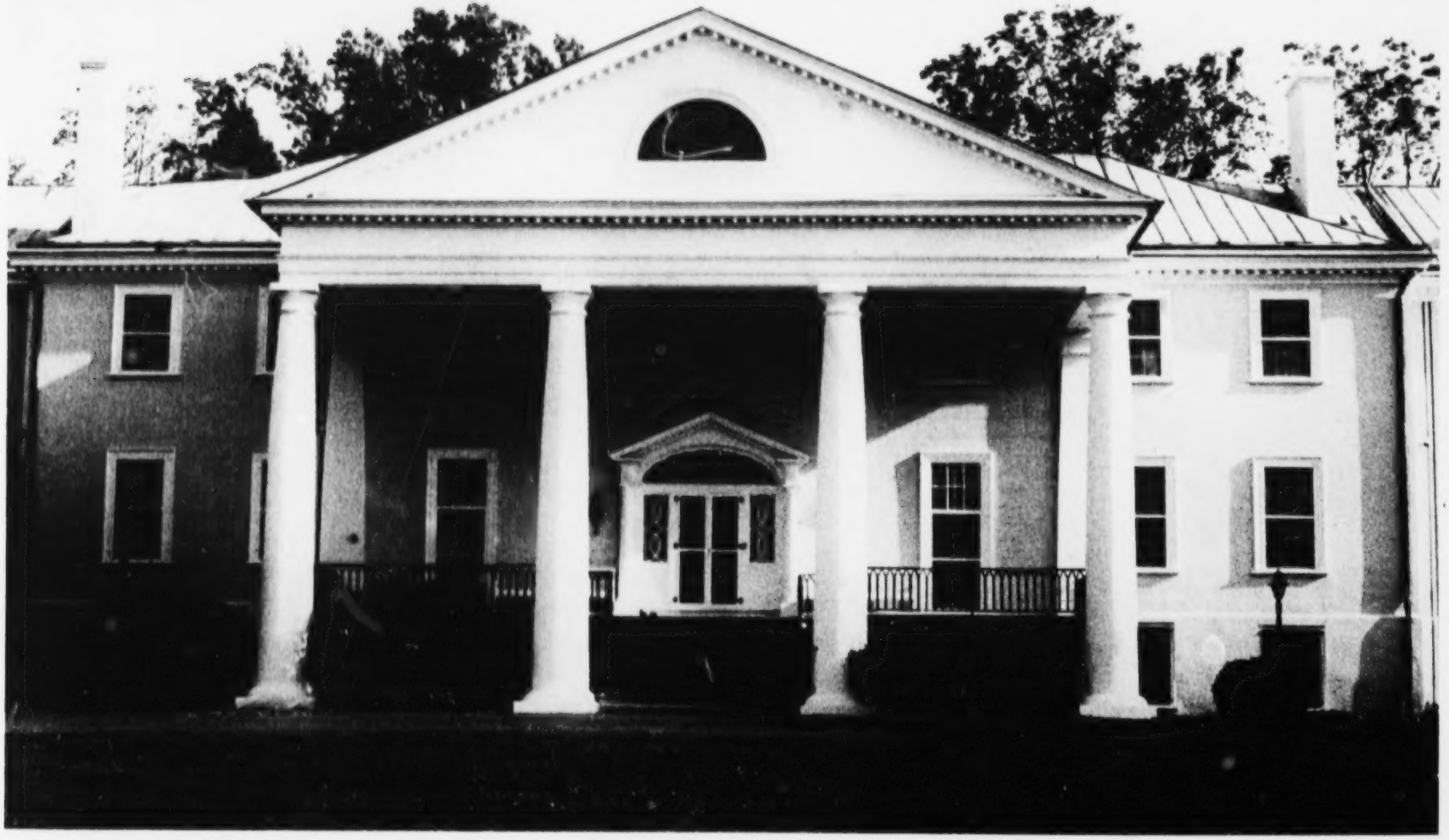
Refer to facts in the list of events in the preceding timetable. Use these facts to respond to the items below.

1. Identify at least three events that can be linked to the origin and development of the project to write and publish *The Federalist*.

2. Which five events in the timetable would you identify as most significant in the history of the ratification debates of 1787-1788?

3. List in chronological order the five events in your response to item 2 above.

4. Why do you think these five events are the most significant ones in the history of the ratification debates?



Montpelier, the home of James Madison, as it is today (near Orange, Virginia). Montpelier passed out of the Madison family shortly after the fourth President's death in 1836. At the turn of the century, William du Pont of Wilmington, Delaware bought the estate. A descendant, Marian du Pont Scott, bequeathed Montpelier to the National Trust for Historic Preservation in 1984, and it is now open to the public.

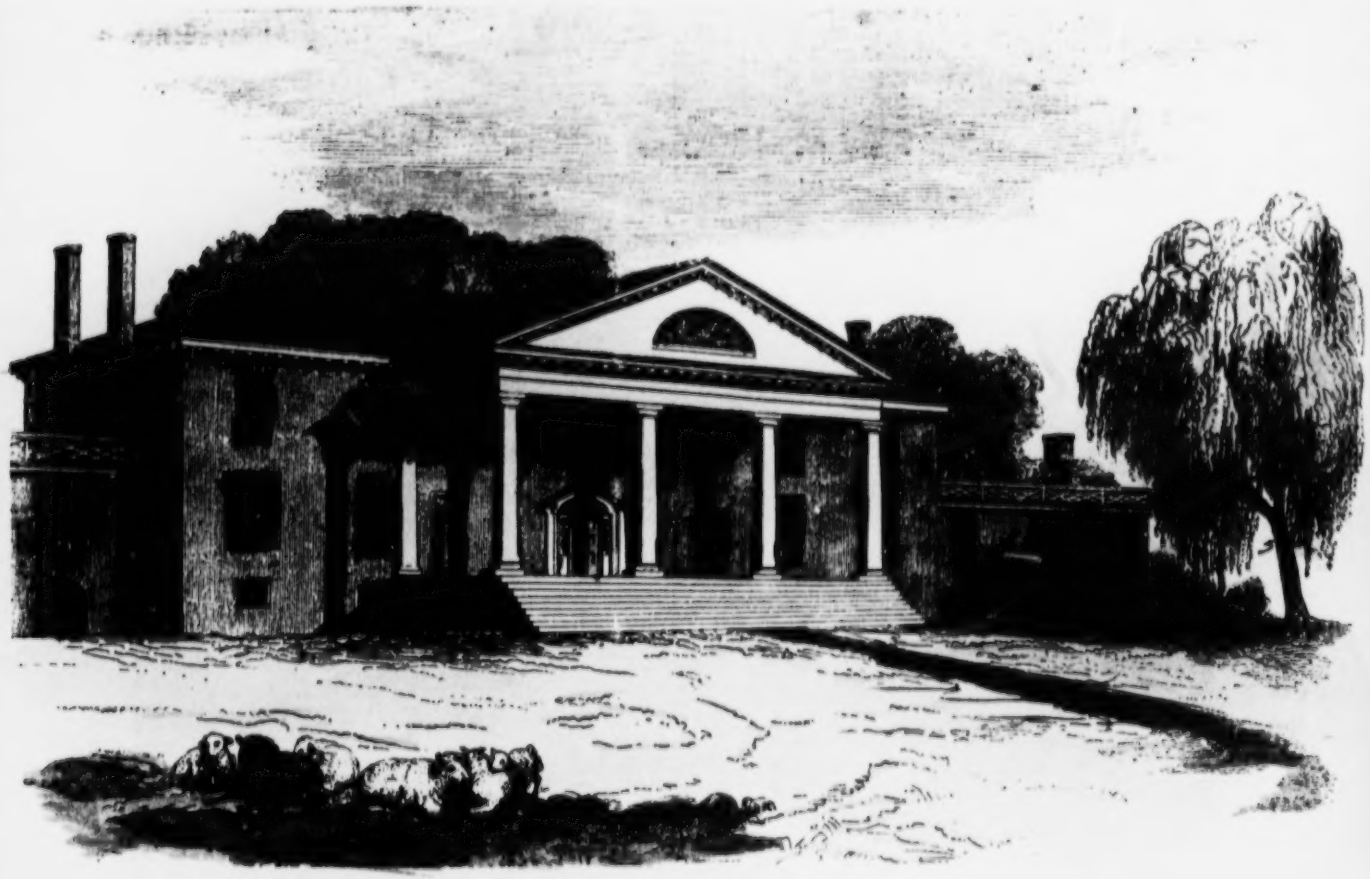
Source: National Trust for Historic Preservation

Part Three: Documents

Part Three consists of selected primary documents. There are seven papers of James Madison in *The Federalist*, and six papers of Anti-Federalist writers. These documents are listed below:

1. *The Federalist* No. 10.
2. *The Federalist* No. 14.
3. *The Federalist* No. 39.
4. *The Federalist* No. 41.
5. *The Federalist* No. 47.
6. *The Federalist* No. 48.
7. *The Federalist* No. 51.
8. *Essay I, Brutus.*
9. *Essay IV, Brutus.*
10. *Letter IV, Agrippa.*
11. *Letter XVII, The Federal Farmer.*
12. *Letter I, Centinel.*
13. *The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents.*

The *Lessons* in this volume include excerpts from the documents in the preceding list. Teachers may want to duplicate and distribute copies of these documents to students. Teachers are advised to read the complete text of each document before using excerpts from it in a *Lesson*.



Montpelier (near Orange, Virginia) was the home of James Madison. The father of James Madison began construction of this building in 1755, when James was four years old. This print depicts Montpelier in 1830, about six years before James Madison died.

Source: National Trust for Historic Preservation.

Document 1
The Federalist No. 10 (Madison)

November 22, 1787
To the People of the State of New York:

AMONG the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished, as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments, but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective propri-

etors ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well as of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufacturers be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The appointment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the *causes* of faction cannot be removed and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long labored and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the

impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre on men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within

which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effects of faction is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and to schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here again the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

Publius

Document 2
The Federalist No. 14 (Madison)

November 30, 1787
To the People of the State of New York:

WE HAVE seen the necessity of the Union, as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests, as the only substitute for those military establishments which have subverted the liberties of the old world, and as the proper antidote for the diseases of faction, which have proved fatal to other popular governments, and of which alarming symptoms have been betrayed by our own. All that remains within this branch of our inquiries is to take notice of an objection that may be drawn from the great extent of country which the Union embraces. A few observations on this subject will be the more proper, as it is perceived that the adversaries of the new Constitution are availing themselves of the prevailing prejudice with regard to the practicable sphere of republican administration, in order to supply, by imaginary difficulties, the want of those solid objections which they endeavor in vain to find.

The error which limits republican government to a narrow district has been unfolded and refuted in preceding papers. I remark here only that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy, applying to the former reasonings drawn from the nature of the latter. The true distinction between these forms was also adverted to on a former occasion. It is that in a democracy the people meet and exercise the government in person; in a republic they assemble and administer it by their representatives and agents. A democracy, consequently, will be confined to a small spot. A republic may be extended over a large region.

To this accidental source of the error may be added the artifice of some celebrated authors, whose writings have had a great share in forming the modern standard of political opinions. Being subjects either of an absolute or limited monarchy, they have endeavored to heighten the advantages, or palliate the evils of those forms, by placing in comparison the vices and defects of the republican and by citing as specimens of the latter the turbulent democracies of ancient Greece and modern Italy. Under the confusion of names, it has been an easy task to transfer to a republic observations applicable to a democracy only; and among others, the observation that it can never be established but among a small number of people, living within a small compass of territory.

Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular and founded, at the same time, wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which the will of the largest political body may be concentered, and its force directed to any object which the public good requires, America can claim the merit of making the discovery the basis of unmixed and extensive republics. It is only to be lamented that any of her citizens should wish to deprive her of the additional merit of displaying its full efficacy in the establishment of the comprehensive system now under her consideration.

As the natural limit of a democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions, so the natural limit of a republic is that distance from the center which will barely allow the representatives to meet as often as may be necessary for the administration of public affairs. Can it be said that the limits of the United States exceed this distance? It will not be said by those who recollect that the Atlantic coast is the longest side of the Union, that during the term of thirteen years, the representatives of the States have been almost continually assembled, and that the members from the most distant States are not chargeable with greater intermissions of attendance than those from the States in the neighborhood of Congress.

That we may form a juster estimate with regard to this interesting subject, let us resort to the actual dimensions of the Union. The limits, as fixed by the

treaty of peace, are: on the east the Atlantic, on the south the latitude of thirty-one degrees, on the west the Mississippi, and on the north an irregular line running in some instances beyond the forty-fifth degree, in others falling as low as the forty-second. The southern shore of Lake Erie lies below that latitude. Computing the distance between the thirty-first and forty-fifth degrees, it amounts to nine hundred and seventy-three common miles; computing it from thirty-one to forty-two degrees, to seven hundred and sixty-four miles and a half. Taking the mean for the distance, the amount will be eight hundred and sixty-eight miles and three fourths. The mean distance from the Atlantic to the Mississippi does not probably exceed seven hundred and fifty miles. On a comparison of this extent with that of several countries in Europe, the practicability of rendering our system commensurate to it appears to be demonstrable. It is not a great deal larger than Germany, where a diet representing the whole empire is continually assembled; or than Poland before the late dismemberment, where another national diet was the depositary of the supreme power. Passing by France and Spain, we find that in Great Britain, inferior as it may be in size, the representatives of the northern extremity of the island have as far to travel to the national council as will be required of those of the remote parts of the Union.

Favorable as this view of the subject may be, some observations remain which will place it in the light still more satisfactory.

In the first place it is to be remembered that the general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention to abolish the governments of the particular States, its adversaries would have some ground for their objection; though it would not be difficult to show that if they were abolished the general government would be compelled by the principle of self-preservation, to reinstate them in their proper jurisdiction.

A second observation to be made is that the immediate object of the federal Constitution is to secure the union of the thirteen primitive States, which we know to be practicable; and to add to them such other States as may arise in their own bosoms, or in their neighborhoods, which we cannot doubt to be equally practicable. The arrangements that may be necessary for those angles and fractions of our territory which lie on our northwestern frontier must be left to those whom further discoveries and experience will render more equal to the task.

Let it be remarked, in the third place, that the intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout, the whole extent of the thirteen States. The communication between the Western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.

A fourth and still more important consideration is, that as almost every State will on one side or other be a frontier, and will thus find, in a regard to its safety, an inducement to make some sacrifices for the sake of the general protection; so the States which lie at the greatest distance from the heart of the Union, and which, of course, may partake lest of the ordinary circulation of its benefits, will be at the same time immediately contiguous to foreign nations, and will consequently stand, on particular occasions, in greatest need of its strength and resources. It may be inconvenient for Georgia, or the States forming our western or northeastern borders, to send their representatives to the seat of government; but they would find it more so to struggle alone against an invading enemy, or even to support alone the whole expense of those precautions which may be dictated by the neighborhood of continual danger. If they should derive less benefit, therefore, from the union in some respects than the less distant States, they will derive greater benefit from it in other respects, and thus the proper equilibrium will be maintained throughout.

I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance, or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion would conduct you. Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members

of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow citizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defence of their sacred rights, consecrate their Union, and excite horror at the idea of their becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces, in order to preserve our liberties and promote our happiness. But why is the experiment of an extended republic to be rejected merely because it may comprise what is new? Is it not the glory of the people of America, that, whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to overrule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience? To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theater, in favor of private rights and public happiness. Had no important step been taken by the leaders of the Revolution for which a precedent cannot be discovered, no government established of which an exact model did not present itself, the people of the United States might at this moment have been numbered among the melancholy victims of misguided councils, must at best have been laboring under the weight of some of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily we trust for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of governments which have no model on the face of the globe. They formed the design of a great Confederacy, which it is incumbent on their successors to improve and perpetuate. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the Union, this was the work most difficult to be executed; this is the work which has been new modeled by the act of your convention, and it is that act on which you are now to deliberate and to decide.

Publius

Document 3
The Federalist No. 39 (Madison)

January 16, 1788
To the People of the State of New York:

THE last paper having concluded the observations which were meant to introduce a candid survey of the plan of government reported by the convention, we now proceed to the execution of that part of our undertaking.

The first question that offers itself is whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then are the distinctive characters of the republican form? Were an answer to this question be sought, not by recurring to principles but in the application of the term by political writers, to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the coordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceived at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress, and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, ac-

cording to the example in most of the States. Even the judges with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard, and to the model of State constitutions. The House of Representatives is periodically elective as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective for the period of six years; which is but one year more than the period of the Senate of Maryland, and but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no constitutional provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at anytime during his continuance in office. The tenure by which the judges are to hold their places, is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter.

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought with equal care to have preserved the *federal* form, which regards the Union as a *Confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the Union as a *consolidation* of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

First—In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose, but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a *national* but a *federal* act.

That it will be a federal and not a national act, as these terms are understood by the objectors—the act of the people, as forming so many independent States, not as forming one aggregate nation—is obvious from this single consideration: that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal*, and not a *national* constitution.

The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be

represented in the same proportion, and on the same principle as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations from so many distinct and coequal bodies politic. From this aspect of government, it appears to be a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the *operation of the government*, is by the adversaries of the plan of the convention supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the *national* not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. But the operation of the government on the people in their individual capacities, in its ordinary and most essential proceedings, will, in the sense of its opponents, on the whole, designate it, in this relation, a *national* government.

But if the government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involved in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated in one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly *national* nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportion by *States*, not by *citizens*, it departs from the national and advances towards the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal* and partakes of the *national* character.

The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from

which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal or wholly national.

Publius

Document 4
The Federalist No. 41 (Madison)

January 19, 1788
To The People of the State of New York:

THE Constitution proposed by the convention may be considered under the two general points of view. The FIRST relates to the sum or quantity of power which it vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of the government and the distribution of this power among its several branches.

Under the first view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States?

Is the aggregate power of the general government greater than ought to have been vested in it? This is the first question.

It cannot have escaped those who have attended with candor to the arguments employed against the extensive powers of the government that the authors of them have very little considered how far these powers were necessary means of attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible abuses which must be incident to every power or trust of which a beneficial use can be made. This method of handling the subject cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking and may confirm the prejudices of the misthinking: but cool and candid people will at once reflect that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgment on this subject, it will be proper to review several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers.

The powers falling within the *first* class are those of declaring war and granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils.

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into the proof of the affirmative. The existing Confederation establishes this power in the most ample form.

Is the power of raising armies and equipping fleets necessary? This is involved in the foregoing power. It is involved in the power of self-defense.

But was it necessary to give an INDEFINITE POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE, as well as in WAR?

The answer to these questions has been too far anticipated in another place to admit an extensive discussion of them in this place. The answer indeed seems to be so obvious and conclusive as scarcely to justify such a discussion in any place. With what color of propriety could the force necessary for defence be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition or set bounds to the exertions of all other

nations, then indeed might it prudently chain the discretion of its own government and set bounds to the exertions for its own safety.

How could a readiness for war in time of peace be safely prohibited, unless we could prohibit in like manner the preparations and establishments of every hostile nation? The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions. If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions. The fifteenth century was the unhappy epoch of military establishments in the time of peace. They were introduced by Charles VII of France. All Europe has followed, or been forced into, the example. Had the example not been followed by other nations, all Europe must long ago have worn the chains of universal monarch. Were every nation except France now to disband its peace establishments, the same event might follow. The veteran legions of Rome were an over-match for the undisciplined valor of all other nations, and rendered her the mistress of the world.

Not the less true is it, that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary, provision. On the smallest scale it has inconveniences. On an extensive scale its consequences may be fatal. On any scale it is an object of laudable circumspection and precaution. A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. It was remarked on a former occasion that the want of this pretext had saved the liberties of one nation in Europe. Being rendered by her insular situation and her maritime resources impregnable to the armies of her neighbors, the rulers of Great Britain have never been able, by real or artificial dangers, to cheat the public into an extensive peace establishment. The distance of the United States from the powerful nations of the world gives them the same happy security. A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never for a moment be forgotten that they are indebted for this advantage to the Union alone. The moment of its dissolution will be the date of a new order of things. The fears of the weaker, or the ambition of the stronger States, or Confederacies, will set the same example in the new, as Charles VII. did in the old world. The example will be followed here from the same motives which produced universal imitation there. Instead of deriving from our situation the precious advantage which Great Britain has derived from hers, the face of America will be but a copy of that of the continent of Europe. It will present liberty everywhere crushed between standing armies and perpetual taxes. The fortunes of disunited America will be even more disastrous than those of Europe. The sources of evil in the latter are confined to her own limits. No superior powers of another quarter of the globe intrigue among her rival nations, inflame their mutual animosities, and render them the instruments of foreign ambitions, jealousy, and revenge. In America the miseries springing from her internal jealousies, contentions, and wars, would form a part only of her lot. A plentiful addition of evils would have their source in that relation in which Europe stands to this quarter of the earth, and which no other quarter of the earth bears to Europe.

This picture of the consequences of disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty ought to have it ever before his eyes that he may cherish in his heart a due attachment to the Union of America and be able to set a due value on the means of preserving it.

Next to the effectual establishment of the Union, the best possible precaution against danger from standing armies is a limitation of the term for which revenue may be appropriated to their support. This precaution the Constitution has prudently added. I will not repeat here the observations which I flatter

myself have placed this subject in a just and satisfactory light. But it may not be improper to take notice of an argument against this part of the Constitution, which has been drawn from the policy and practice of Great Britain. It is said that the continuance of an army in that kingdom requires an annual vote of the legislature; whereas the American Constitution has lengthened this critical period to two years. This is the form in which the comparison is usually stated to the public: but is it a just form? Is it a fair comparison? Does the British Constitution restrain the parliamentary discretion to one year? Does the American impose on the Congress appropriations for two years? On the contrary, it cannot be unknown to the authors of the fallacy themselves that the British Constitution fixes no limit whatever to the discretion of the legislature, and that the American ties down the legislature to two years as the longest admissible term.

Had the argument from the British example been truly stated, it would have stood thus: The term for which supplies may be appropriated to the army establishment, though unlimited by the British Constitution, has nevertheless, in practice, been limited by parliamentary discretion to a single year. Now, if in Great Britain, where the House of Commons is elected for seven years; where so great a proportion of the members are elected by so small a proportion of the people; where the electors are so corrupted by the representatives, and the representatives so corrupted by the Crown, the representative body can possess a power to make appropriations to the army for an indefinite term, without desiring, or without daring, to extend the term beyond a single year, ought not suspicion herself to blush, in pretending that the representatives of the United States, elected FREELY by the WHOLE BODY of the people, every SECOND YEAR, cannot be safely intrusted with the discretion over such appropriations, expressly limited to the short period of TWO YEARS?

A bad cause seldom fails to betray itself. Of this truth, the management of the opposition to the federal government is an unvaried exemplification. But among all the blunders which have been committed, none is more striking than the attempt to enlist on that side the prudent jealously entertained by the people of standing armies. The attempt has awakened fully the public attention to that important subject; and has led to investigations which must terminate in a thorough and universal conviction, not only that the Constitution has provided the most effectual guards against danger from that quarter, but that nothing short of a Constitution fully adequate to the national defence and the preservation of the Union can save America from as many standing armies as it may be split into States or Confederacies, and from such a progressive augmentation of these establishments in each as will render them as burdensome to the properties and ominous to the liberties of the people as any establishment that can become necessary under a united and efficient government must be tolerable to the former and safe to the latter.

The palpable necessity of the power to provide and maintain a navy has protected that part of the Constitution against a spirit of censure which has spared few other parts. It must, indeed, be numbered among the greatest blessings of America, that as her Union will be the only source of her maritime strength, so this will be a principal source of her security against danger from abroad. In this respect our situation bears another likeness to the insular advantage of Great Britain. The batteries most capable of repelling foreign enterprises on our safety are happily such as can never be turned by a perfidious government against our liberties.

The inhabitants of the Atlantic frontier are all of them deeply interested in this provision for naval protection, and if they have hitherto been suffered to sleep quietly in their beds; if their property has remained safe against the predatory spirit of licentious adventurers; if their maritime towns have not yet been compelled to ransom themselves from the terror of a conflagration, by yielding to the exactions of daring and sudden invaders, these instances of good fortune are not to be ascribed to the capacity of the existing government for the protection of those from whom it claims allegiance, but to causes that are fugitive and fallacious. If we except perhaps Virginia and Maryland, which are peculiarly vulnerable on their eastern frontiers, no part of the Union ought to feel more anxiety on this subject than New York. Her seacoast is extensive. A very important district of the State is an island. The State itself is penetrated by a large navigable river for more than fifty leagues. The great emporium of its commerce, the great reservoir of its wealth, lies every moment at the mercy of events, and may almost be regarded as a hostage for ignominious compliances with the dictates of a foreign enemy, or even with the rapacious demands of pirates and barbarians. Should a war be the result of the precarious situation of European affairs, and all unruly passions attending it be let loose on the ocean, our escape from insults and depredations, not only on that element, but every part of the other bordering on it, will be truly miraculous. In the present condition of Amer-

ica, the States more immediately exposed to these calamities have nothing to hope from the phantom of a general government which now exists; and if their single resources were equal to the task of fortifying themselves against the danger, the object to be protected would be almost consumed by the means of protecting them.

The power of regulating and calling forth the militia has been already sufficiently vindicated and explained.

The power of levying and borrowing money, being the sinew of that which is to be exerted in the national defence, is properly thrown into the same class with it. This power, also, has been examined already with much attention, and has, I trust, been clearly shown to be necessary, both in the extent and form given to it by the Constitution. I will address one additional reflection only to those who contend that the power ought to have been restrained to external taxation—by which they mean, taxes on articles imported from other countries. It cannot be doubted that this will always be a valuable source of revenue; that for a considerable time it must be a principal source; that at this moment it is an essential one. But we may form very mistaken ideas on this subject, if we do not call to mind in our calculations, that the extent of revenue drawn from foreign commerce must vary with the variations, both in the extent and the kind of imports; and that these variations do not correspond with the progress of population, which must be the general measure of the public wants. As long as agriculture continues the sole field of labor, the importation of manufacturers must increase as the consumers multiply. As soon as domestic manufactures are begun by the hands not called for by agriculture, the imported manufactures will decrease as the numbers of people increase. In a more remote stage, the imports may consist in a considerable part of raw materials, which will be wrought into articles for exportation, and will, therefore, require rather the encouragement of bounties than to be loaded with discouraging duties. A system of government meant for duration ought to contemplate these revolutions and be able to accommodate itself to them.

Some, who have not denied the necessity of the power of taxation have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States," amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction.

Had no other enumeration or definition of the powers of the Congress been found in the Constitution than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms "to raise money for the general welfare."

But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing had not its origin with the latter.

The objection here is the more extraordinary, as it appears that the language used by the convention is a copy from the articles of Confederation. The objects of the Union among the States, as described in article third, are "their common defence, security of their liberties, and mutual and general welfare." The terms of article eighth are still more identical: "All charges of war and all other expenses that shall be incurred for the common defence or general welfare and allowed by the United States in Congress shall be defrayed out of a common treasury," etc. A similar language again occurs in article ninth. Construe either of these articles by the rules which

would justify the construction put on the new Constitution, and they vest in the existing Congress a power to legislate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defence and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of Congress as they now make use of against the convention. How difficult it is for error to escape its own condemnation.

Publius

Document 5
The Federalist No. 47 (Madison)

January 30, 1788
To the People of the State of New York:

HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts.

One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.

No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to everyone that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct.

The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point.

The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.

On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depository of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote.

From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or, "if the power of judging

be not separated from the legislative and executive powers," he did not mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority. This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches, constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. "When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of *an oppressor*." Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other *as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity*." Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department.

The constitution of Massachusetts has observed a sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares "that the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them." This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address

of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department. As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves.

I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the Revolution and even before the principle under examination had become an object of political attention.

The constitution of New York contains no declaration on this subject, but appears very clearly to have been framed with an eye to the danger of improperly blending the different departments. It gives, nevertheless, to the executive magistrate, a partial control over the legislative department; and, what is more, gives a like control to the judiciary department; and even blends the executive and judiciary departments in the exercise of this control. In its council of appointment members of the legislative are associated with the executive authority, in the appointment of officers, both executive and judiciary. And its court for the trial of impeachments and correction of errors is to consist of one branch of the legislature and the principal members of the judiciary department.

The constitution of New Jersey has blended the different powers of government more than any of the preceding. The governor, who is the executive magistrate, is appointed by the legislature; is chancellor and ordinary, or surrogate of the State; is a member of the Supreme Court of Appeals, and president, with a casting vote, of one of the legislative branches. The same legislative branch acts again as executive council of the governor, and with him constitutes the Court of Appeals. The members of the judiciary department are appointed by the legislative department, and removable by one branch of it, on the impeachment of the other.

According to the constitution of Pennsylvania, the president, who is the head of the executive department, is annually elected by a vote in which the legislative department predominates. In conjunction with an executive council, he appoints the members of the judiciary department, and forms a court of impeachment for trial of all officers, judiciary as well as executive. The judges of the Supreme Court and justices of the peace seem also to be removable by the legislature; and the executive power of pardoning, in certain cases, to be referred to the same department. The members of the executive council are made EX-OFFICIO justices of peace throughout the State.

In Delaware, the chief executive magistrate is annually elected by the legislative department. The speakers of the two legislative branches are vice-presidents in the executive department. The executive chief, with six others appointed, three by each of the legislative branches, constitutes the Supreme Court of Appeals; he is joined with the legislative department in the appointment of the other judges. Throughout the States it appears that the members of the legislature may at the same time be justices of the peace; in this State, the members of one branch of it are EX-OFFICIO justices of the peace; as are also the members of the executive council. The principal officers of the executive department are appointed by the legislative; and one branch of the latter forms a court of impeachments. All officers may be removed on address of the legislature.

Maryland has adopted the maxim in the most unqualified terms; declaring that the legislative, executive, and judicial powers of government ought to be forever separate and distinct from each another. Her constitution, notwithstanding, makes the executive magistrate appointable by the legislative department; and the members of the judiciary by the executive department.

The language of Virginia is still more pointed on this subject. Her constitution declares "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time, except that the justices of county courts shall be eligible to either House of Assembly." Yet we find not only this express exception with respect to the members of the inferior courts, but that the chief magistrate, with his executive council, are appointable by the legislature; that two members of the latter are triennially displaced at the pleasure of the legislature; and that all the principal offices, both executive and judiciary, are filled by the same department. The executive prerogative of pardon, also, is in one case vested in the legislative department.

The constitution of North Carolina, which declares "that the legislative, executive, and supreme judicial powers of government ought to be forever separate and distinct from each other," refers, at the same time, to the legislative department, the appointment not only of the executive chief, but all the principal officers within both that and the judiciary department.

In South Carolina, the constitution makes the executive magistracy eligible by the legislative department. It gives to the latter, also, the appointment of the members of the judiciary department, including even justices of the peace and sheriffs; and the appointment of officers in the executive department, down to captains in the army and navy of the State.

In the constitution of Georgia, where it is declared "that the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other," we find that the executive department is to be filled by appointments of the legislature; and the executive prerogative of pardon to be finally exercised by the same authority. Even justices of the peace are to be appointed by the legislature.

In citing these cases, in which the legislative, executive, and judiciary departments have not been kept totally separate and distinct, I wish not to be regarded as an advocate for the particular organizations of several State governments. I am fully aware that among the many excellent principles which they exemplify, they carry strong marks of the haste, and still stronger of the inexperience, under which they were framed. It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper. What I have wished to evince is that the charge brought against the proposed Constitution of violating the sacred maxim of free government is warranted neither by the real meaning annexed to that maxim by its author, nor by the sense in which it has hitherto been understood in America. This interesting subject will be resumed in the ensuing paper.

Publius

Document 6
The Federalist No. 48 (Madison)

February 1, 1788
To the People of the State of New York:

IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us that the efficacy of the provision has been greatly overrated; and that some more adequate defence is indispensably necessary for the more feeble against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies whether the operation of a particular measure will,

or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory evidence, I will refer to the example of two States, attested by two unexceptionable authorities.

The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting *Notes on the State of Virginia*, p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of the government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, *in many* instances, *decided rights* which should have been left to *judiciary controversy*, and *the direction of the executive, during the whole time of their session, is becoming habitual and familiar.*"

The other State which I shall have for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the Constitution, was "to inquire whether the Constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the Constitution." In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears than the Constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the Constitution against improper acts of the legislature.

The constitutional trial by jury has been violated and powers assumed which had not been delegated by the Constitution.

Executive powers had been usurped.

The salaries of the judges, which the Constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

Those who wish to see several particulars falling under each of these heads may consult the journals of the council which are in print. Some of them, it

will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

It appears, also, that the executive department had not been innocent of frequent breaches of the Constitution. There are three observations, however, which ought to be made on this head: *first*, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; *second*, in most of the other instances they conformed either to the declared or the known sentiments of the legislative department; *third*, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

Publius

Document 7
The Federalist No. 51 (Madison)

February 6, 1788
To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution? The only answer that can be given is that as all these exterior provisions are found to be inadequate the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; second, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provisions for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less

requisite in the distribution of the supreme powers of the State.

But it is not possible to give each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defence with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution, it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and numbers of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States, oppressive combinations of a majority will be facilitated; the best security, under the republican forms, for the rights of every class of citizens, will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against

the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the *federal principle*.

Publius

Document 8
Essay I (Brutus)

18 October 1787
To the Citizens of the State of New-York.

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty—if it tends to establish a despotism, , what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining asylum for liberty will be shut up, and posterity will execrate your memory.

Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

With these few introductory remarks, I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontroulable power, legislative, executive and judi-

cial, with respect to every object to which it extends, for by the last clause of section 8th, article Ist, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States.—The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance—there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises;—there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation: but this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare; this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only [is] the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of a confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late [state?] governments, on this article of raising money. No state can emit paper money—lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States: the only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxe[s], when the federal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

It might be here shown, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of

liberty.—I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The power of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the Ist article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be *necessary and proper*, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite [indefinite?], and may, for ought I know, be exercised in such a manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding.—By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontroulable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, *proper and necessary*, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such

a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected." Of the same opinion is the marquis Beccarari.

History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that every existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three million of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed

of such heterogeneous and discordant principles, as would constantly be contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people. Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet—a government of all others the most to be dreaded.

In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this

new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections—they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice—perfection is not to be expected in any thing that is the production of man—and if I did not in my conscience believe that this scheme was defective in the fundamental principles—in the foundation upon which a free and equal government must rest—I would hold my peace.

Brutus

Document 9
Essay IV (Brutus)

29 November 1787
To the People of the State of New-York.

There can be no free government where the people are not possessed of the power of making the laws by which they are governed, either in their own persons, or by others substituted in their stead.

Experience has taught mankind, that legislation by representatives is the most eligible, and the only practicable mode in which the people of any country can exercise this right, either prudently or beneficially. But then, it is a matter of the highest importance, in forming this representation, that it be so constituted as to be capable of understanding the true interests of the society for which it acts, and so disposed as to pursue the good and happiness of the people as its ultimate end. The object of every free government is the public good, and all lesser interests yield to it. That of every tyrannical government, is the happiness and aggrandisement of one, or a few, and to this the public felicity, and every other interest must submit.—The reason of this difference in these governments is obvious. The first is so constituted as to collect the views and wishes of the whole people in that of their rulers, while the latter is so framed as to separate the interests of the governors from that of the governed. The principle of self-love, therefore, that will influence the one to promote the good of the whole, will prompt the other to follow its own private advantage. The great art, therefore, in forming a good constitution, appears to be this, so to frame it, as that those to whom the power is committed shall be subject to the same feelings, and aim at the same objects as the people do, who transfer to them their authority. There is no possible way to effect this but by an equal, full and fair representation; this, therefore, is the great desideratum in politics. However fair an appearance any government may make, though it may possess a thousand plausible articles and be decorated with ever so many ornaments, yet if it is deficient in this essential principle of a full and just representation of the people, it will be only like a painted sepulcher—For, without this it cannot be a free government; let the administration of it be good or ill, it still will be a government, not according to the will of the people, but according to the will of a few.

To test this new constitution then, by this principle, is of the last importance—It is to bring it to the touch-stone of national liberty, and I hope I shall be excused, if, in this paper, I pursue the subject commenced in my last number, to wit, the necessity of an equal and full representation in the legislature.—In that, I showed that it was not equal, because the smallest states are to send the same number of members to the senate as the largest, and, because the slaves, who afford neither aid nor defence to the government, are to encrease the proportion of members. To prove that it was not a just or adequate representation, it was urged, that so small a number could not resemble the people, or possess their sentiments and dispositions. That the choice of members would commonly fall upon the rich and great, while the middling class of the community would be excluded. That in so small a representation there was no security against bribery and corruption.

The small number which is to compose this legislature, will not only expose it to the danger of that kind of corruption, and undue influence, which will arise from the gift of places of honor and emolument, or the more direct one of bribery, but it will also subject it to another kind of influence no less fatal to the liberties of the people, though it be not so flagrantly repugnant to the principles of rectitude. It is not to be expected that a legislature will be found in any country that will not have some of its members, who will pursue their private ends, and for which they will sacrifice the public good. Men of this character are, generally, artful and designing, and frequently possess brilliant talents and abilities; they commonly act in concert, and agree to share the spoils of their country among them; they will keep their object ever in view, and follow it with constancy. To effect their purpose, they will assume any shape, and Proteus like, mould themselves into any form—where they find members proof against direct bribery or gifts of offices, they will endeavor to mislead their minds by specious and false reasoning, to impose upon their unsuspecting honesty

by an affectation of zeal for the public good; they will form juntos, and hold out-door meetings; they will operate upon the good nature of their opponents, by a thousand little attentions, and teize them into compliance by the earnestness of solicitation. Those who are acquainted with the manner of conducting business in public assemblies, know how prevalent art and address are in carrying a measure, even over men of the best intentions, and of good understanding. The firmest security against this kind of improper and dangerous influence, as well as all other, is a strong and numerous representation: in such a house of assembly, so great a number must be gained over, before the private views of individuals could be gratified that there could be scarce a hope of success. But in the federal assembly, seventeen men are all that is necessary to pass a law. It is probable, it will seldom happen that more than twenty-five will be requisite to form a majority, when it is considered what a number of places of honor and emolument will be in the gift of the executive, the powerful influence that great and designing men have over the honest and unsuspecting, by their art and address, their soothing manners and civilities, and their cringing flattery, joined with their affected patriotism; when these different species of influence are combined, it is scarcely to be hoped that a legislature, composed of so small a number, as the one proposed by the new constitution, will long resist their force.

A farther objection against the feebleness of the representation is, that it will not possess the confidence of the people. The execution of the laws in a free government must rest on this confidence, and this must be founded on the good opinion they entertain of the framers of the laws. Every government must be supported, either by the people having such an attachment to it, as to be ready, when called upon, to support it, or by a force at the command of the government, to compel obedience. The latter mode destroys every idea of a free government; for the same force that may be employed to compel obedience to good laws, might, and probably would be used to wrest from the people their constitutional liberties.—Whether it is practicable to have a representation for the whole union sufficiently numerous to obtain that confidence which is necessary for the purpose of internal taxation, and other powers to which this proposed government extends, is an important question. I am clearly of the opinion, it is not, and therefore I have stated this in my first number, as one of the reasons against going into an entire consolidation of the states—one of the most capital errors in the system, is that of extending the powers of the federal government to objects to which it is not adequate, which it cannot exercise without endangering public liberty, and which it is not necessary they should possess, in order to preserve the union and manage our national concerns; of this, however, I shall treat more fully in some future paper—But, however this may be, certain it is, that the representation in the legislature is not so formed as to give reasonable ground for public trust.

In order for the people safely to repose themselves on their rulers, they should not only be of their own choice. But it is requisite they should be acquainted with their abilities to manage the public concerns with wisdom. They should be satisfied that those who represent them are men of integrity, who will pursue the good of the community with fidelity; and will not be turned aside from their duty by private interest, or corrupted by undue influence; and that they will have such a zeal for the good of those whom they represent, as to excite them to be diligent in their service; but it is impossible the people of the United States should have sufficient knowledge of their representatives, when the numbers are so few, to acquire any rational satisfaction on either of these points. The people of this state will have very little acquaintance with those who may be chosen to represent them; a great part of them will, probably, not know the characters of their own members, much less that of a majority of those who will compose the federal assembly; they will consist of men, whose names they have never heard, and whose talents and regard for the public good, they are total strangers to; and they will have no persons so immediately of their choice so near them, of their neighbours and of their own rank in life, that they can feel themselves secure in trusting their interests in their hands. The representatives of the people cannot, as they now do, after they have passed laws, mix with the people, and explain to them the motives which induced the adoption of any measure, point out its utility, and remove objections or silence unreasonable clamours against it.—The number will be so small that but a very few of the most sensible and respectable yeomanry of the country can ever have any knowledge of them; being so far removed from the people, their station will be elevated and important, and they will be considered as ambitious and designing. They will not be viewed by the people as part of themselves, but as a body distinct from them, and having separate interests to pursue; the consequence will be, that a perpetual jealousy will exist in the minds of the people against them; their conduct will be narrowly watched; their measures scrutinized; and their laws opposed, evaded, or re-

luctantly obeyed. This is natural, and exactly corresponds with the conduct of individuals towards those in whose hands they intrust important concerns. If the person confided in, be a neighbour with whom his employer is intimately acquainted, whose talents, he knows, are sufficient to manage the business with which he is charged, his honesty and fidelity unsuspected, and his friendship and zeal for the service of this principal unquestionable, he will commit his affairs into his hands with unreserved confidence, and feel himself secure; all the transactions of the agent will meet with the most favorable construction, and the measures he takes will give satisfaction. But, if the person employed be a stranger, whom he has never seen, and whose character or ability or fidelity he cannot fully learn—If he is constrained to choose him, because it was not in his power to procure one more agreeable to his wishes, he will trust him with caution, and be suspicious of all his conduct.

If then this government should not derive support from the good will of the people, it must be executed by force, or not executed at all; either case would lead to the total destruction of liberty.—The convention seemed aware of this, and have therefore provided for calling out the militia to execute the laws of the union. If this system was so framed as to command that respect from the people, which every good free government will obtain, this provision was unnecessary—the people would support the civil magistrate. This power is a novel one, in free governments—these have depended for the execution of the laws on the Posse Comitatus, and never raised an idea, that the people would refuse to aid the civil magistrate in executing those laws they themselves had made. I shall now dismiss the subject of the incompetency of the representation, and proceed, as I promised, to shew, that, impotent as it is, the people have no security that they will enjoy the exercise of the right of electing this assembly, which, at best, can be considered but as the shadow of representation.

By section 4, article I, the Congress are authorized, at any time, by law, to make, or alter, regulations respecting the time, place, and manner of holding elections for senators and representatives, except as to the places of choosing senators. By this clause the right of election itself, is, in a great measure, transferred from the people to their rulers.—One would think, that if any thing was necessary to be made a fundamental article of the original compact, it would be, that of fixing the branches of the legislature, so as to put it out of its power to alter itself by modifying the election of its own members at will and pleasure. When a people once resign the privileges of a fair election, they clearly have none left worth contending for.

It is clear that, under this article, the federal legislature may institute such rules respecting elections as to lead to the choice of one description of men. The weakness of the representation, tends but too certainly to confer on the rich and *well-born*, all honours; but the power granted in this article, may be so exercised, as to secure it almost beyond a possibility of controul. The proposed Congress may make the whole state one district, and direct, that the capital (the city of New-York, for instance) shall be the place for holding the election; the consequence would be, that none but men of the most elevated rank in society would attend, and they would as certainly choose men of their own class; as it is true what the *Apostle Paul* saith, that "no man ever yet hated his own flesh, but nourisheth and cherisheth it."—They may declare that those members who have the greatest number of votes, shall be considered as duly elected; the consequence would be that the people, who are dispersed in the interior parts of the state, would give their votes for a variety of candidates, while any order, or profession, residing in populous places, by uniting their interests, might procure whom they pleased to be chosen—and by this means the representatives of the state may be elected by one tenth part of the people who actually vote. This may be effected constitutionally, and by one of those silent operations which frequently takes place without being noticed, but which often produces such changes as entirely to alter a government, subvert a free constitution, and rivet the chains on a free people before they perceive they are forged. Had the power of regulating elections been left under the direction of the state legislatures, where the people are not only nominally but substantially represented, it would have been secure; but if it was taken out of their hands, it surely ought to have been fixed on such a basis as to have put it out of the power of the federal legislature to deprive the people of it by law. Provision should have been made for marking out the states into districts, and for choosing, by a majority of votes, a person out of each of them of permanent property and residence in the district which he was to represent.

If the people of America will submit to a constitution that will vest in the hands of any body of men a right to deprive them by law of the privilege of a fair election, they will submit to almost any thing. Reasoning with them will be in vain, they must be left until they are brought to reflection by feeling oppression—they will then have to wrest from their

oppressors, by a strong hand, that which they now possess, and which they may retain if they will exercise but a moderate share of prudence and firmness.

I know it is said that the dangers apprehended from this clause are merely imaginary, that the proposed general legislature will be disposed to regulate elections upon proper principles, and to use their power with discretion, and to promote the public good. On this, I would observe, that constitutions are not so necessary to regulate the conduct of good rulers as to restrain that of bad ones.—Wise and good men will exercise power so as to promote the public happiness under any form of government. If we are to take it for granted, that those who administer the government under this system, will always pay proper attention to the rights and interests of the people, nothing more was necessary than to say who should be invested with the powers of government, and leave them to exercise it at will and pleasure. Men are apt to be deceived both with respect to their own dispositions and those of others. Though this truth is proved by almost every page of the history of nations, to wit, that power, lodged in the hands of rulers to be used at discretion, is almost always exercised to the oppression of the people, and the aggrandizement of themselves; yet most men think if it was lodged in their hands they would not employ it in this manner.—Thus when the prophet *Elisha* told *Hazael*, "I know the evil that thou wilt do unto the children of Israel; their strong holds wilt thou set on fire, and their young men, wilt thou slay with the sword, and wilt dash their children, and rip up their women with child." Hazael had no idea that he ever should be guilty of such horrid cruelty, and said to the prophet, "Is thy servant a dog that he should do this great thing." Elisha answered, "The Lord hath shewed me that thou shalt be king of Syria." The event proved, that Hazael only wanted an opportunity to perpetrate these enormities without restraint, and he had a disposition to do them, though he himself knew it not.

Brutus

Document 10
Letter IV (Agrippa)

3 December 1787
To the People.

Having considered some of the principal advantages of the happy form of government under which it is our peculiar good fortune to live, we find by experience, that it is the best calculated of any form hitherto invented, to secure to us the rights of our persons and of our property, and that the general circumstances of the people shew an advanced state of improvement never before known. We have found the shock given by the war in a great measure obliterated, and the publick debt contracted at that time to be considerably reduced in the nominal sum. The Congress lands are fully adequate to the redemption of the principal of their debt, and are selling and populating very fast. The lands of this state, at the west, are, at the moderate price of eighteen pence an acre, worth near half a million pounds in our money. They ought, therefore, to be sold as quick as possible. An application was made lately for a large tract at that price, and continual applications are made for other lands in the eastern part of our state. Our resources are daily augmenting.

We find, then, that after the experience of near two centuries our separate governments are in full vigour. They discover, for all the purposes of internal regulation, every symptom of strength, and none of decay. The new system is, therefore, for such purposes, useless and burdensome.

Let us now consider how far it is practicable consistent with the happiness of the people and their freedom. It is the opinion of the ablest writers on the subject, that no extensive empire can be governed upon republican principles, and that such a government will degenerate to a despotism, unless it be made up of a confederacy of smaller states, each having the full powers of internal regulation. This is precisely the principle which has hitherto preserved our freedom. No instance can be found of any free government of considerable extent which has been supported upon any other plan. Large and consolidated empires may indeed dazzle the eyes of a distant spectator with their splendour, but if examined more nearly are always found to be full of misery. The reason is obvious. In large states the same principles of legislation will not apply to all the parts. The inhabitants of warmer climates are more dissolute in their manners, and less industrious, than in colder countries. A degree of severity is, therefore, necessary with one which would cramp the spirit of the other. We accordingly find that the very great empires have always been despotick. They have indeed tried to remedy the inconveniences to which the people were exposed by local regulations; but these contrivances have never answered the end. The laws not being made by the people, who felt the inconveniences, did not suit their circumstances. It is under such tyranny that the Spanish provinces languish, and such would be our misfortune and degradation, if we should submit to have the concerns of the whole empire managed by one legislature. To promote the happiness of the people it is necessary that there should be local laws; and it is necessary that those laws should be made by the representatives of those who are immediately subject to the want of them. By endeavouring to suit both extremes, both are injured.

It is impossible for one code of laws to suit Georgia and Massachusetts. They must therefore, legislate for themselves. Yet there is, I believe, not one point of legislation that is not surrendered in the proposed plan. Questions of every kind respecting property are determinable in a continental court, and so are all kinds of criminal causes. The continental legislature has, therefore, a right to make rules *in all cases* by which their judicial courts shall proceed and decide causes. No rights are reserved to the citizens. The laws of Congress are in all cases to be the supreme law of the land, and paramount to the constitutions of the individual states. The Congress may institute what modes of trial they please, and no plea drawn from the constitution of any state can avail. This new system is, therefore, a consolidation of all the states into one large mass, however diverse the parts may be of which it is to be composed. The idea of an uncompounded republick, on an average, one thousand miles in length, and eight hundred in breadth, and containing six millions of white inhabitants all reduced to the same standard of morals, or habits, and of laws, is in itself an absurdity, and

contrary to the whole experience of mankind. The attempt by Great Britain to introduce such a system, struck us with horrour, and when it was proposed by some theorist that we should be represented in parliament, we uniformly declared that one legislature could not represent so many different interests for the purpose of legislation and taxation. This was the leading principle of the revolution, and makes an essential article in our creed. All that part, therefore, of the new system, which relates to the internal government of the states, ought at once to be rejected.

Agrippa

Document 11
Letter XVII (The Federal Farmer)

January 23, 1788.
Dear Sir,

I believe the people of the United States are full in the opinion, that a free and mild government can be preserved in their extensive territories, only under the substantial forms of a federal republic. As several of the ablest advocates for the system proposed, have acknowledged this (and I hope the confessions they have published will be preserved and remembered) I shall not take up time to establish this point. A question then arises, how far that system partakes of a federal republic.—I observed in a former letter, that it appears to be the first important step to a consolidation of the states; that its strong tendency is to that point.

But what do we mean by a federal republic? and what by a consolidated government? To erect a federal republic, we must first make a number of states on republican principles; each state with a government organized for the internal management of its affairs: The states, as such, must unite under a federal head, and delegate to it powers to make and execute laws in certain enumerated cases, under certain restrictions; this head may be a single assembly, like the present congress, or the Amphictionic council; or it may consist of a legislature, with one or more branches; of an executive, and of a judiciary. To form a consolidated, or one entire government, there must be no state, or local governments, but all things, persons and property, must be subject to the laws of one legislature alone; to one executive, and one judiciary. Each state government, as the government of New Jersey, &c. is a consolidated, or one entire government, as it respects the counties, towns, citizens and property within the limits of the state.—The state governments are the basis, the pillar on which the federal head is placed, and the whole together, when formed on elective principles, constitute a federal republic. A federal republic in itself supposes state or local governments to exist, as the body or props, on which the federal head rests, and that it cannot remain a moment after they cease. In erecting the federal government, and always in its councils, each state must be known as a sovereign body; but in erecting this government, I conceive, the legislature of the state, by the expressed or implied assent of the people, or the people of the state, under the direction of the government of it, may accede to the federal compact: Nor do I conceive it to be necessarily a part of a confederacy of states, that each have an equal voice in the general councils. A confederated republic being organized, each state must retain powers for managing its internal police, and all delegate to the union power to manage general concerns: The quantity of power the union must possess is one thing, the mode of exercising the powers given, is quite a different consideration; and it is the mode of exercising them, that makes one of the essential distinctions between one entire or consolidated government, and a federal republic; that is, however the government may be organized, if the laws of the union, in most important concerns, as in levying and collecting taxes, raising troops, &c. operate immediately upon the persons and property of individuals, and not on states, extend to organizing the militia, &c. the government, as to its administration, as to making and executing laws, is not federal, but consolidated. To illustrate my idea—the union makes a requisition, and assigns to each state its quota of men or monies wanted; each state, by its own laws and officers, in its own way, furnishes its quota: here the state governments stand between the union and individuals; the laws of the union operate only on states, as such, and federally: Here nothing can be done without the meetings of the state legislatures—but in the other case the union, though the state legislature should not meet for years together, proceeds immediately, by its own laws and officers, to levy and collect monies of individuals, to inlist men, form armies, &c. [H]ere the laws of the union operate immediately on the body of the people, on persons and property; in the same manner the laws of one entire consolidated government operate.—These two modes are very distinct, and in their operation and consequences have directly opposite tendencies: The first makes the existence of the state governments indispensable, and throws all the detail business of levying and collecting the taxes, &c. into the hands of those gov-

ernments, and into the hands, of course, of many thousand officers solely created by, and dependent on the state. The last entirely excludes the agency of the respective states, and throws the whole business of levying and collecting taxes, &c. into the hands of many thousand officers solely created by, and dependent upon the union, and makes the existence of the state government of no consequence in the case. It is true, congress in raising any given sum in direct taxes, must by the constitution, raise so much of it in one state, and so much in another, by a fixed rule, which most of the states some time since agreed to: But this does not effect the principle in question, it only secures each state against any arbitrary proportions. The federal mode is perfectly safe and eligible, founded in the true spirit of a confederated republic; there could be no possible exception to it, did we not find by experience, that the states will sometimes neglect to comply with the reasonable requisitions of the union. It being according to the fundamental principles of federal republics, to raise men and monies by requisitions, and for the states individually to organize and train the militia, I conceive, there can be no reason whatever for departing from them, except this, that the states sometimes neglect to comply with reasonable requisitions, and that it is dangerous to attempt to compel a delinquent state by force, as it may often produce a war. We ought, therefore, to enquire attentively, how extensive the evils to be guarded against are, and cautiously limit the remedies to the extent of the evils. I am not about to defend the confederation, or to charge the proposed constitution with imperfections not in it; but we ought to examine facts, and strip them of the false colourings often given them by incautious observations, by unthinking or designing men. We ought to premise, that laws for raising men and monies, even in consolidated governments, are not often punctually complied with. Historians, except in extraordinary cases, but very seldom take notice of the detail collection of taxes; but these facts we have fully proved, and well attested; that the most energetic governments have relinquished taxes frequently, which were of many years standing. These facts amply prove, that taxes assessed, have remained for many years uncollected. I agree there have been instances in the republics of Greece, Holland &c. in the course of several centuries, of states neglecting to pay their quotas of requisitions; but it is a circumstance certainly deserving of attention, whether these nations which have depended on requisitions principally for their defence, have not raised men and monies nearly as punctually as entire governments, which have taxed directly; whether we have not found the latter as often distressed for the want of troops and monies as the former. It has been said that the Amphictionic council, and the Germanic head, have not possessed sufficient powers to controul the members of the republic in a proper manner. Is this, if true, to be imputed to requisitions? Is it not principally to be imputed to the unequal powers of those members, connected with this important circumstance, that each member possessed power to league itself with foreign powers, and powerful neighbours, without the consent of the head. After all, has not the Germanic body a government as good as its neighbours in general? and did not the Grecian republic remain united several centuries, and form the theatre of human greatness? No government in Europe has commanded monies more plentifully than the government of Holland. As to the United States, the separate states lay taxes directly, and the union calls for taxes by way of requisitions; and is it a fact, that more monies are due in proportion on requisitions in the United States, than on the state taxes directly laid?—It is but about ten years since congress begun to make requisitions, and in that time, the monies, &c. required, and the bounties given for men required of the states, have amounted, specie value, to about 36 millions dollars, about 24 millions of dollars of which have been actually paid; and a very considerable part of the 12 millions not paid, remains so not so much from the neglect of the states, as from the sudden changes in paper money, &c. which in a great measure rendered payments of no service, and which often induced the union indirectly to relinquish one demand, by making another in a different form. Before we totally condemn requisitions, we ought to consider what immense bounties the states gave, and what prodigious exertions they made in the war, in order to comply with the requisitions of congress; and if since the peace they have been delinquent, ought we not carefully to enquire, whether that delinquency is to be imputed solely to the nature of requisitions? ought it not in part to be imputed to two other causes? I mean first, an opinion, that has extensively prevailed, that the requisitions for domestic interest have not been founded on just principles; and secondly, the circumstance, that the government itself, by proposing imposts, &c. has departed virtually from the constitutional system; which proposed changes, like all changes proposed in government, produce an inattention and negligence in the execution of the government in being.

I am not for depending wholly on requisitions; but I mention these few facts to shew they are not

so totally futile as many pretend. For the truth of many of these facts I appeal to the public records; and for the truth of the others, I appeal to many republican characters, who are best informed in the affairs of the United States. Since the peace, and till the convention reported, the wisest men in the United States generally supposed, that certain limited funds would answer the purposes of the union: and though the states are by no means in so good a condition as I wish they were, yet, I think, I may safely affirm, they are in a better condition than they would be had congress always possessed the powers of taxation now contended for. The fact is admitted, that our federal government does not possess sufficient powers to give life and vigor to the political system; and that we experience disappointments, and several inconveniences; but we ought carefully to distinguish those which are merely the consequences of a severe and tedious war, from those which arise from defects in the federal system. There has been an entire revolution in the United States within thirteen years, and the least we can compute the waste of labour and property at, during that period, by the war, is three hundred million of dollars. Our people are like a man just recovering from a severe fit of sickness. It was the war that disturbed the course of commerce, introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise; men of knowledge and reflection must perceive it;—but then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufacturers, &c. and thereby laying the foundation of good government, and of individual and political happiness, than any people ever did in a like time; we must judge from a view of the country and facts, and not from foreign newspapers, or our own, which are printed chiefly in the commercial towns, where imprudent living, imprudent importations, and many unexpected disappointments, have produced a despondency, and a disposition to view every thing on the dark side. Some of the evils we feel, all will agree, ought to be imputed to the defective administration of the governments. From these and various considerations, I am very clearly of opinion, that the evils we sustain, merely on account of the defects of the confederation, are but as a feather in the balance against a mountain, compared with those which would, infallibly, be the result of the loss of general liberty, and that happiness men enjoy under a frugal, free, and mild government.

Heretofore we do not seem to have seen danger any where, but in giving power to congress, and now no where but in congress wanting powers; and, without examining the extent of the evils to be remedied, by one step, we are for giving up to congress almost all powers of any importance without limitation. The defects of the confederation are extravagantly magnified, and every species of pain we feel imputed to them: and hence it is inferred, there must be a total change of the principles, as well as forms of government: and in the main point, touching the federal powers, we rest all on a logical inference, totally inconsistent with experience and sound political reasoning.

It is said, that as the federal head must make peace and war, and provide for the common defence, it ought to possess all powers necessary to that end: that powers unlimited, as to the purse and sword, to raise men and monies, and form the militia, are necessary to that end; and, therefore, the federal head ought to possess them. This reasoning is far more specious than solid: it is necessary that these powers so exist in the body politic, as to be called into exercise whenever necessary for the public safety; but it is by no means true, that the man, or congress of men, whose duty it more immediately is to provide for the common defence, ought to possess them without limitation. But clear it is, that if such men, or congress, be not in a situation to hold them without danger to liberty, he or they ought not to possess them. It has long been thought to be a well founded position, that the purse and sword ought not to be placed in the same hands in a free government. Our wise ancestors have carefully separated them—placed the sword in the hands of their king, even under considerable limitations, and the purse in the hands of the commons alone: yet the king makes peace and war, and it is his duty to provide for the common defence of the nation. This authority at least goes thus far—that a nation, well versed in the science of government, does not conceive it to be necessary or expedient for the man entrusted with the common defence and general tranquility, to possess unlimitedly the powers in question, or even in any considerable degree. Could he, whose duty it is to defend the public, possess in himself independently, all the means of doing it consistent with the public good, it might be convenient: but the people of England know that their liberties and happiness would be in infinitely greater danger from the king's unlimited possession of these powers, than from all external enemies and internal commotions to which they might be exposed: therefore, though they have made it his duty to guard

the empire, yet they have wisely placed in other hands, the hands of their representatives, the power to deal out and controul the means. In Holland their high mightiness must provide for the common defence, but for the means they depend, in a considerable degree, upon requisitions made on the state or local assemblies. Reason and facts evince, that however convenient it might be for an executive magistrate, or federal head, more immediately charged with the national defence and safety, solely, directly, and independently to possess all the means; yet such magistrate, or head, never ought to possess them, if thereby the public liberties shall be endangered. The powers in question have never been, by nations wise and free, deposited, nor can they ever be, with safety, any where, but in the principal members of the national system,—where these form one entire government, as in Great-Britain, they are separated and lodged in the principal members of it. But in a federal republic, there is quite a different organization; the people form this kind of government, generally, because their territories are too extensive to admit of their assembling in one legislature, or of executing the laws on free principles under one entire government. They convene in their local assemblies, for local purposes, and for managing their internal concerns, and unite their states under a federal head for general purposes. It is the essential characteristic of a confederated republic, that this head be dependent on, and kept within limited bounds by, the local governments; and it is because, in these alone, in fact, the people can be substantially assembled or represented. It is, therefore, we very universally see, in this kind of government, the congressional powers placed in a few hands, and accordingly limited, and specifically enumerated: and the local assemblies strong and well guarded, and composed of numerous members. Wise men will always place the controuling power where the people are substantially collected by their representatives. By the proposed system, the federal head will possess, without limitation, almost every species of power that can, in its exercise, tend to change the government, or to endanger liberty; while in it, I think it has been fully shewn, the people will have but the shadow of representation, and but the shadow of security for their rights and liberties. In a confederated republic, the division of representation, &c. in its nature, requires a correspondent division and deposit of powers relative to taxes and military concerns: and I think the plan offered stands quite alone, in confounding the principles of governments in themselves totally distinct. I wish not to exculpate the states for their improper neglects in not paying their quotas of requisitions; but, in applying the remedy, we must be governed by reason and facts. It will not be denied, that the people have a right to change the government when the majority chuse it, if not restrained by some existing compact—that they have a right to displace their rulers, and consequently to determine when their measures are reasonable or not—and that they have a right, at any time, to put a stop to those measures they may deem prejudicial to them, by such forms and negatives as they may see fit to provide. From all these, and many other well founded considerations, I need not mention, a question arises, what powers shall there be delegated to the federal head, to insure safety, as well as energy, in the government? I think there is a safe and proper medium pointed out by experience, by reason, and facts. When we have organized the government, we ought to give power to the union, so far only as experience and present circumstances shall direct, with a reasonable regard to time to come. Should future circumstances, contrary to our expectations, require further powers be transferred to the union, we can do it far more easily, than get back those we may now imprudently give. The system proposed is untried: candid advocates and opposers admit, that it is, in a degree, a mere experiment, and that its organization is weak and imperfect; surely then, the safe ground is cautiously to vest power in it, and when we are sure we have given enough for ordinary exigencies, to be extremely careful how we delegate powers, which, in common cases, must necessarily be useless or abused, and of very uncertain effect in uncommon ones.

By giving the union power to regulate commerce, and to levy and collect taxes by imposts, we give it an extensive authority, and permanent productive funds, I believe quite as adequate to the present demands of the union, as exises and direct taxes can be made to the present demands of the separate states. The state governments are now about four times as expensive as that of the union; and their several state debts added together, are nearly as large as that of the union—our impost duties since the peace have been almost as productive as the other sources of taxation, and when under one general system of regulations, the probability is, that those duties will be very considerably increased: Indeed the representation proposed will hardly justify giving to congress unlimited powers to raise taxes by imposts, in addition to the other powers the union must necessarily have. It is said, that if congress possess only authority to raise taxes by imposts, trade probably will be overburdened with taxes, and

the taxes of the union be found inadequate to any uncommon exigencies: To this we may observe, that trade generally finds its own level, and will naturally and necessarily leave off any undue burdens laid upon it: further, if congress alone possess the impost, and also unlimited power to raise monies by excises and direct taxes, there must be much more danger that two taxing powers, the union and states, will carry excises and direct taxes to an unreasonable extent, especially as these have not the natural boundaries taxes on trade have. However, it is not my object to propose to exclude congress from raising monies by internal taxes, as by duties, excises, and direct taxes, but my opinion is, that congress, especially in its proposed organization, ought not to raise monies by internal taxes, except in strict conformity to the federal plan; that is, by the agency of the state governments in all cases, except where a state shall neglect, for an unreasonable time, to pay its quota of a requisition; and never where so many of the state legislatures as represent a majority of the people, shall formally determine an excise law or requisition is improper, in their next session after the same be laid before them. We ought always to recollect that the evil to be guarded against is found by our own experience, and the experience of others, to be mere neglect in the states to pay their quotas; and power in the union to levy and collect the neglecting states' quotas with interest, is fully adequate to the evil. By this federal plan, with this exception mentioned, we secure the means of collecting the taxes by the usual process of law, and avoid the evil of attempting to compel or coerce a state; and we avoid also a circumstance, which never yet could be, and I am fully confident never can be, admitted in a free federal republic; I mean a permanent and continued system of tax laws of the union, executed in the bowels of the states by many thousand officers, dependent as to the assessing and collecting federal taxes, solely upon the union. On every principle then, we ought to provide, that the union render an exact account of all monies raised by imposts and other taxes; and that whenever monies shall be wanted for the purposes of the union, and beyond the proceeds of the impost duties, requisitions shall be made on the states for the monies so wanted; and that the power of laying and collecting shall never be exercised, except in cases where a state shall neglect, a given time, to pay its quota. This mode seems to be strongly pointed out by the reason of the case, and spirit of the government; and I believe, there is no instance to be found in a federal republic, where the congressional powers ever extended generally to collecting monies by direct taxes or excises. Creating all these restrictions, still the powers of the union in matters of taxation, will be too unlimited; further checks, in my mind, are indispensably necessary. Nor do I conceive, that as full a representation as is practicable in the federal government, will afford sufficient security: the strength of the government, and the confidence of the people, must be collected principally in the local assemblies; every part or branch of the federal head must be feeble, and unsafely trusted with large powers. A government possessed of more power than its constituent parts will justify, will not only probably abuse it, but be unequal to bear its own burden; it may as soon be destroyed by the pressure of power, as languish and perish for want of it.

There are two ways further of raising checks, and guarding against undue combinations and influence in a federal system. The first is, in levying taxes, raising and keeping up armies, in building navies, in forming plans for the militia, and in appropriating monies for the support of the military, to require the attendance of a large proportion of the federal representatives, as two-thirds or three-fourths of them; and in passing laws, in these important cases, to require the consent of two-thirds or three-fourths of the members present. The second is, by requiring that certain important laws of the federal head, as a requisition or a law for raising monies by excise shall be laid before the state legislatures, and if disapproved of by a given number of them, say by as many of them as represent a majority of the people, the law shall have no effect. Whether it would be adviseable to adopt both, or either of these checks, I will not undertake to determine. We have seen them both exist in confederated republics. The first exists substantially in the confederation, and will exist in some measure in the plan proposed, as in chusing a president by the house, in expelling members; in the senate, in making treaties, and in deciding on impeachments, and in the whole in altering the constitution. The last exists in the United Netherlands, but in a much greater extent. The first is founded on this principle, that these important measures may, sometimes, be adopted by a bare quorum of members, perhaps, from a few states, and that a bare majority of the federal representatives may frequently be of the aristocracy, or some particular interests, connections, or parties in the community, and governed by motives, views, and inclinations not compatible with the general interest.—The last is founded on this principle, that the people will be substantially represented, only in their state or local assemblies; that their principal security must be found in them; and that, therefore,

they ought to have ultimately a constitutional controul over such interesting measures.

I have often heard it observed, that our people are well informed, and will not submit to oppressive governments; that the state governments will be their ready advocates, and possess their confidence, mix with them, and enter into all their wants and feelings. This is all true; but of what avail will these circumstances be, if the state governments, thus allowed to be the guardians of the people, possess no kind of power by the forms of the social compact, to stop in their passage, the laws of congress injurious to the people. State governments must stand and see the law take place; they may complain and petition—so may individuals; the members of them, in extreme cases, may resist, on the principles of self-defence—so may the people and individuals.

It has been observed, that the people, in extensive territories, have more power, compared with that of their rulers, than in small states. Is not directly the opposite true? The people in a small state can unite and act in concert, and with vigour; but in large territories, the men who govern find it more easy to unite, while people cannot; while they cannot collect the opinions of each part, while they move to different points, and one part is often played off against the other.

It has been asserted, that the confederate head of a republic at best, is in general weak and dependent;—that the people will attach themselves to, and support their local governments, in all disputes with the union. Admit the fact: is it any way to remove the inconvenience by accumulating powers upon a weak organization? The fact is, that the detail of administration of affairs, in this mixed republics, depends principally on the local governments; and the people would be wretched without them: and a great proportion of social happiness depends on the internal administration of justice, and on internal police. The splendor of the monarch, and the power of the government are one thing. The happiness of the subject depends on very different causes: but it is to the latter, that the best men, the greatest ornaments of human nature, have most carefully attended: it is to the former tyrants and oppressors have always aimed.

The Federal Farmer

Document 12
Letter I (Centinel)

October 5, 1787
To The Freemen of Pennsylvania.

Permit one of yourselves to put you in mind of certain *liberties* and *privileges* secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government, secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property, not particularly described in such warrant, shall not be granted. Your constitution further provides "that in controversies respecting property, and in suits between man and man, the parties have a right *to trial by jury, which ought to be held sacred.*" It also provides and declares, "*that the people have a right of* FREEDOM OF SPEECH, *and of* WRITING *and* PUBLISHING *their sentiments, therefore* THE FREEDOM OF THE PRESS OUGHT NOT BE RESTRAINED." The Constitution of Pennsylvania is *yet* in existence, *as yet* you have the right to *freedom of speech*, and of *publishing your sentiments*. How long those rights will appertain to you, you yourselves are called upon to say, whether your *houses* shall continue to be your *castles*; whether your *papers*, your *persons* and your *property*, are to be held sacred and free from *general warrants*, you are now to determine. Whether the *trial by jury* is to continue as your birthright, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

Without presuming upon my own judgement, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for their's; and if I use my pen with the boldness of a freeman, it is because I know that *the liberty of the press yet remains unviolated*, and *juries yet are judges*.

The late Convention have submitted to your consideration a plan of a new federal government—The subject is highly interesting to your future welfare—Whether it be calculated to promote the great ends of civil society, *viz*. the happiness and prosperity of the community; it behooves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its principles; it ought to be dispassionately and deliberately examined, and its own intrinsic merit the only criterion of your patronage. If ever free and unbiassed discussion was proper or necessary, it is on such an occasion.—All the blessings of liberty and the dearest privileges of freemen, are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves; without such assistance the people are too apt to yield an implicit assent to the opinions of those characters, whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide; not considering that the love of domination is generally in proportion to talents, abilities, and superior acquirements; and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the *artful and designing*. If it were not for the stability and attachment which time and habit gives to forms of government, it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation.

The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity; it is the genius of the common law to resist innovation.

The wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures, have availed themselves, very successfully, of this favorable disposition; for the people thus unsettled in their sentiments, have been prepared to accede to any extreme of government; all the distresses and difficulties they experience, proceeding from various causes, have been ascribed to the impotency of the present confederation, and thence they have been led to expect full relief from the adoption of the proposed system of government; and in the other event, immediately ruin and annihilation as a nation. These characters flatter themselves that they have lulled all distrust and jealousy of their new plan, by gaining the concurrence of the two men in whom America has the highest confidence, and now triumphantly exult in the completion of their long meditated schemes of power and aggrandisement. I would be very far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one, has been imposed on, in a subject of which he must be necessarily inexperienced, from his other arduous engagements; and that the weakness and indecision attendant on old age, has been practised on in the other.

I am fearful that the principles of government inculcated in Mr. Adams's treatise, and enforced in the numerous essays and paragraphs in the newspapers, have misled some well designing members of the late Convention.—But it will appear in the sequel, that the construction of the proposed plan of government is infinitely more extravagant.

I have been anxiously expecting that some enlightened patriot would, ere this, have taken up the pen to expose the futility, and counteract the baneful tendency of such principles. Mr. Adams's *sine qua non* of a good government is three balancing powers, whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community. He asserts that the administration of every government, will ever be actuated by views of private interest and ambition, to the prejudice of the public good; that therefore the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests between the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third. This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. Mr. Adams, although he has traced the constitution of every form of government that ever existed, as far as history affords materials, has not been able to adduce a single instance of such a government; he indeed says that the British constitution is such in theory, but this is rather a confirmation that his principles are chimerical and not to be reduced to practice. If such an organization of power were practicable, how long would it continue? not a day—for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. The state of society in England is much more favorable to such a scheme of government than that of America. There they have a powerful hereditary nobility, and real distinctions of rank and interests; but even there, for want of that perfect equallity of power and distinction of interests, in the three orders of government, they exist but in name; the only operative and efficient check, upon the conduct of administration, is the sense of the people at large.

Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society; if the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

Therefore, as different orders in government will not produce the good of the whole, we must recur to other principles. I believe it will be found that the form of government, which holds those entrusted with power, in the greatest responsibility to their constituents, the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided[;] in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained, in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on—If you complicate the plan by various orders, the people will be perplexed and divided in their sentiments about the source of abuses or miscon-

duct, some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility for then, whenever the people feel a grievance they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people.

Having premised this much, I shall now proceed to the examination of the proposed plan of government, and I trust, shall make it appear to the meanest capacity, that it has none of the essential requisites of a free government; that it is neither founded on those balancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of that responsibility to its constituents, which, in my opinion, is the only effectual security for the liberties and happiness of the people; but on the contrary, that it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed.

I shall previously consider the extent of the powers intended to be vested in Congress, before I examine the construction of the general government.

It will not be controverted that the legislative is the highest delegated power in government, and that all others are subordinate to it. The celebrated *Montesquieu* establishes it as a maxim, that legislation necessarily follows the power of taxation. By sect. 8, of the first article of the proposed plan of government, "the Congress are to have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and *general welfare* of the United States; but all duties, imposts and excises, shall be uniform throughout the United States." Now what can be more comprehensive than these words; not content by other sections of this plan, to grant all the great executive powers of a confederation, and a STANDING ARMY IN TIME OF PEACE, that grand engine of oppression, and moreover the absolute controul over the commerce of the United States and all external objects of revenue, such as unlimited imposts upon imports, etc.—they are to be vested with every species of *internal* taxation;—whatever taxes, duties and exercises they may deem requisite for the *general welfare*, may be imposed on the citizens of these states, levied by the officers of Congress, distributed through every district in America; and the collection would be enforced by the standing army, however grievous or improper they may be. The Congress may construe every purpose for which the state legislatures now lay taxes, to be for the *general welfare*, and thereby seize upon every object of revenue.

The judicial power by Ist sect. of article 3 ["]shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citzens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

The judicial power to be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish.

The objects of jurisdiction recited above, are so numerous, and the shades of distinction between civil causes are oftentimes so slight, that it is more than probable that the state judicatories would be wholly superceded; for in contests about jurisdiction, the federal court, as the most powerful, would ever prevail. Every person acquainted with the history of the courts in England, knows by what ingenious sophisms they have, at different periods, extended the sphere of their jurisdiction over objects out of the line of their institution, and contrary to their very nature; courts of a criminal jurisdiction obtaining cognizance in civil causes.

To put the omnipotency of Congress over the state government and judicatories out of all doubt, the 6th article ordains that "this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the *supreme law of the land*, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

By these sections the all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation, necessarily absorb the state legislatures and judicatories; and that such was in

contemplation of the framers of it, will appear from the provision made for such event, in another part of it; (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind.) By sect. 4th of the Ist article, "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law, make or alter such regulations, except as to the place of chusing senators.*" The plain construction of which is, that when the legislatures drop out of sight, from the necessary operation of this government, then Congress are to provide for the election and appointment of representatives and senators.

If the foregoing be a just comment—if the United States are to be melted down into one empire, it becomes you to consider, whether such a government, however constructed, would be eligible in so extended a territory; and whether it would be practicable, consistent with freedom? It is the opinion of the greatest writers, that a very extensive country cannot be governed on democratical principles, on any other plan, than a confederation of a number of small republics, possessing all the powers of internal government, but united in the management of their foreign and general concerns.

It would not be difficult to prove, that any thing short of depotism, could not bind so great a country under one government; and that whatever plan you might, at the first setting out, establish, it would issue in a despotism.

If one general government could be instituted and maintained on principles of freedom, it would not be so competent to attend to the various local concerns and wants, of every particular district[,] as well as the peculiar governments, who are nearer the scene, and possessed of superior means of information[;] besides, if the business of the *whole* union is to be managed by one government, there would not be time. Do we not already see, that the inhabitants in a number of larger states, who are remote from the seat of government, are loudly complaining of the inconveniencies and disadvantages they are subjected to on this account, and that, to enjoy the comforts of local government, they are separating into smaller divisions.

Having taken a review of the powers, I shall now examine the construction of the proposed general government.

Art. I. sect. I. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives." By another section, the president (the principal executive officer) has a conditional controul over their proceedings.

Sect. 2. "The house of representatives shall be composed of members chosen every second year, by the people of the several states. The number of representatives shall not exceed one for every 30,000 inhabitants."

The senate, the other constituent branch of the legislature, is formed by the legislature of each state appointing two senators, for the term of six years.

The executive power by Art. 2. sec. I. is to be vested in a president of the United States of America, elected for four years: Sec. 2. gives him "power, by and with the consent of the senate to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law, etc. And by another section he has the absolute power of granting reprieves and pardons for treason and all other high crimes and misdemeanors, except in case of impeachment.

The foregoing are the outlines of the plan.

Thus we see, the house of representatives, are on the part of the people to balance the senate, who I suppose will be composed of the *better sort*, the *well born*, etc. The number of representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information, of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the controul over both, they may govern the choice, by ordering the *representatives* of a *whole* state, to be *elected* in *one* place, and that too may be the most *inconvenient*.

The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest state in the union has equal weight with the great states of Virginia, Massachusetts, or Pennsylvania—The Senate, besides its legislative functions, has a very considerable share in the Executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment, will lead to permanency; the members are chosen for six years, the mode is under the controul of Congress, and as

there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of state, unless he coincided with the views of the Senate, would either become the head of the aristocratic junto in that body, or its minion; besides, their influence being the most predominant, could the best secure his re-election to office. And from his power of granting pardons, he might skreen from punishment the most treasonable attempts on the liberties of the people, when instigated by the Senate.

From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY.

The framers of it[,] actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the *liberty of the press*, that grand *palladium of freedom*, and *scourge of tyrants*; but observed a total silence on that head. It is the opinion of some great writers, that if the liberty of the press, by an institution of religion, or otherwise, could be rendered *sacred*, even in *Turkey*, that despotism would fly before it. And it is worthy of remark, that there is no declaration of personal rights, premised in most free constitutions; and that trial by *jury* in *civil* cases is taken away; for what other construction can be put on the following, viz. Article III. Sect. 2d. "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have *original* jurisdiction. In all the other cases above mentioned, the Supreme Court shall have *appellate* jurisdiction, both as to *law and fact*?" It would be a novelty in jurisprudence, as well as evidently improper to allow an appeal from the verdict of a jury, on the matter of fact; therefore, it implies and allows of a dismission of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expressly stipulated for, but not in civil cases.

But our situation is represented to be so *critically* dreadful, that, however reprehensible and exceptionable the proposed plan of government may be, there is no alternative, between the adoption of it and absolute ruin.—My fellow citizens, things are not at that crisis, it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissentions, we have not so much to fear from them, as to precipitate us into this form of government, without it is a safe and a proper one. For remember, of all *possible* evils, that of *despotism* is the *worst* and the most to be *dreaded*.

Besides, it cannot be supposed, that the first essay on so difficult a subject, is so well digested, as it ought to be,—if the proposed plan, after a mature deliberation, should meet the approbation of the respective States, the matter will end; but if it should be found to be fraught with dangers and inconveniences, a future general Convention being in possession of the objections, will be the better enabled to plan a suitable government.

Who's here so base, that would a bondman be?
If any, speak; for him I have offended.
Who's here so vile, that will not love his country?
If any, speak; for him have I offended.

Centinel

Document 13

The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents

December 18, 1787

It was not until after the termination of the late glorious contest, which made the people of the United States, an independent nation, that any defect was discovered in the present confederation. It was formed by some of the ablest patriots in America. It carried us successfully through the war; and the virtue and patriotism of the people, with their disposition to promote the common cause, supplied the want of power in Congress.

The requisition of Congress for the five *per cent.* impost was made before the peace, so early as the first of February, 1781, but was prevented taking effect by the refusal of one state; yet it is probable every state in the union would have agreed to this measure at that period, had it not been for the extravagant terms in which it was demanded. The requisition was new molded in the year 1783, and accompanied with an additional demand of certain supplementary funds for 25 years. Peace had now taken place, and the United States found themselves labouring under a considerable foreign and domestic debt, incurred during the war. The requisition of 1783 was commensurate with the interest of the debt, as it was then calculated; but it has been more accurately ascertained since that time. The domestic debt has been found to fall several millions of dollars short of the calculation, and it has lately been considerably diminished by large sales of the western lands. The states have been called on by Congress annually for supplies until the general system of finance proposed in 1783 should take place.

It was at this time that the want of an efficient federal government was first complained of, and that the powers vested in Congress were found to be inadequate to the procuring of the benefits that should result from the union. The impost was granted by most of the states, but many refused the supplementary funds; the annual requisitions were set at nought by some of the states, while others complied with them by legislative acts, but were tardy in their payments, and Congress found themselves incapable of complying with their engagements, and supporting the federal government. It was found that our national character was sinking in the opinion of foreign nations. The Congress could make treaties of commerce, but could not enforce the observance of them. We were suffering from the restrictions of foreign nations, who had shackled our commerce, while we were unable to retaliate: and all now agreed that it would be advantageous to the union to enlarge the powers of Congress; that they should be enabled in the amplest manner to regulate commerce, and to lay and collect duties on the imports throughout the United States. With this view a convention was first proposed by Virginia, and finally recommended by Congress for the different States to appoint deputies to meet in convention, "for the purposes of revising and amending the present articles of confederation, so as to make them adequate to the exigencies of the union." This recommendation the legislatures of twelve states complied with so hastily as not to consult their constituents on the subject; and though the different legislatures had no authority from their constituents for the purpose, they probably apprehended the necessity would justify the measure; and none of them extended their ideas at that time further than "revising and amending the present articles of confederation." Pennsylvania by the act appointing deputies expressly confined their powers to this object; and though it is probable that some of the members of the assembly of this state had at that time in contemplation to annihilate the present confederation, as well as the constitution of Pennsylvania, yet the plan was not sufficiently matured to communicate it to the public.

The majority of the legislature of this commonwealth, were at that time under the influence of the members from the city of Philadelphia. They agreed that the deputies sent by them to convention should have no compensation for their services, which determination was calculated to prevent the election of any member who resided at a distance from the city. It was in vain for the minority to attempt electing delegates to the convention, who understood

the circumstances, and the feelings of the people, and had a common interest with them. They found a disposition in the leaders of the majority of the house to chuse themselves and some of their dependents. The minority attempted to prevent this by agreeing to vote for some of the leading members, who they knew had influence enough to be appointed at any rate, in hopes of carrying with them some respectable citizens of Philadelphia, in whose principles and integrity they could have more confidence; but even in this they were disappointed, except in one member: the eighth member was added at a subsequent session of the assembly.

The Continental convention met in the city of Philadelphia at the time appointed. It was composed of some men of excellent characters; of others who were more remarkable for their ambition and cunning, than their patriotism; and of some who had been opponents to the independence of the United States. The delegates from Pennsylvania were, six of them, uniform and decided opponents to the constitution of this commonwealth. The convention sat upwards of four months. The doors were kept shut, and the members brought under the most solemn engagements of secrecy. Some of those who opposed their going so far beyond their powers, retired, hopeless, from the convention, others had the firmness to refuse signing the plan altogether; and many who did sign it, did it not as a system they wholly approved, but as the best that could be then obtained, and notwithstanding the time spent on this subject, it is agreed on all hands to be a work of haste and accommodation.

Whilst the gilded chains were forging in the secret conclave, the meaner instruments of despotism without, were busily employed in alarming the fears of the people with dangers which did not exist, and exciting their hopes of greater advantages from the expected plan than even the best government on earth could produce.

The proposed plan had not many hours issued forth from the womb of suspicious secrecy, until such as were prepared for the purpose, were carrying about petitions for people to sign, signifying their approbation of the system, and requesting the legislature to call a convention. While every measure was taken to intimidate the people against opposing it, the public papers teemed with the most violent threats against those who should dare to think for themselves, and *tar and feathers* were liberally promised to all those who would not immediately join in supporting the proposed government be it what it would. Under such circumstances petitions in favour of calling a convention were signed by great numbers in and about the city, before they had the leisure to read and examine the system, many of whom, now they are better acquainted with it, and have had time to investigate its principles, are heartily opposed to it. The petitions were speedily handed into the legislature.

Affairs were in this situation when on the 28th of September last a resolution was proposed to the assembly by a member of the house who had been also a member of the federal convention, for calling a state convention, to be elected within *ten* days for the purpose of examining and adopting the proposed constitution of the United States, though, at this time the house had not received it from Congress. This attempt was opposed by a minority, who after offering every argument in their power to prevent the precipitate measure, without effect, absented themselves from the house as the only alternative left them, to prevent the measure taking place previous to their constituents being acquainted with the business—That violence and outrage which had been so often threatened was now practised; some of the members were seized the next day by a mob collected for the purpose, and forcibly dragged to the house, and there detained by force whilst the quorum of the legislature, *so formed*, compleated their resolution. We shall dwell no longer on this subject, the people of Pennsylvania have been already acquainted therewith. We would only further observe that every member of the legislature, previously to taking his seat, by solemn oath or affirmation, declares, "that he will not do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state." And that constitution which they are so solemnly sworn to support cannot legally be altered but by a recommendation of a council of censors, who alone are authorised to propose alterations and amendments, and even these must be published at least *six months*, for the consideration of the people.—The proposed system of government for the United States, if adopted, will alter and may annihilate the constitution of Pennsylvania; and therefore the legislature had no authority whatever to recommend the calling a convention for that purpose. This proceeding could not be considered as binding on the people of this commonwealth. The house was formed by violence, some of the members composing it were detained there by force, which alone would have vitiated any proceedings, to which they were otherwise competent; but had the legislature been legally formed, this business was absolutely without their power.

In this situation of affairs were the subscribers elected members of the convention of Pennsylvania. A convention called by a legislature in direct violation of their duty, and composed in part of members, who were compelled to attend for that purpose, to consider of a constitution proposed by a convention of the United States, who were not appointed for the purpose of framing a new form of government, but whose powers were expressly confined to altering and amending the present articles of confederation.—Therefore the members of the continental convention in proposing the plan acted as individuals, and not as deputies from Pennsylvania. The assembly who called the state convention acted as individuals, and not as the legislature of Pennsylvania; nor could they or the convention chosen on their recommendation have authority to do any act or thing, that can alter or annihilate the constitution of Pennsylvania (both of which will be done by the new constitution) nor are their proceedings in our opinion, at all binding on the people.

The election for members of the convention was held at so early a period and the want of information was so great, that some of us did not know of it until after it was over, and we have reason to believe that great numbers of the people of Pennsylvania have not yet had an opportunity of sufficiently examining the proposed constitution.—We apprehend that no change can take place that will affect the internal government or constitution of this commonwealth, unless a majority of the people should evidence a wish for such a change; but on examining the number of votes given for members of the present state convention, we find that upwards of *seventy thousand* freemen who are intitled to vote in Pennsylvania, the whole convention has been elected by about *thirteen thousand* voters, and though *two thirds* of the members of the convention have thought proper to ratify the proposed constitution, yet those *two thirds* were elected by the votes of only *six thousand and eight hundred* freemen.

In the city of Philadelphia and some of the eastern counties, the junto that took the lead in the business agreed to vote for none but such as would solemnly promise to adopt the system in *toto*, without exercising their judgment. In many of the counties the people did not attend the elections as they had not an opportunity of judging the plan. Others did not consider themselves bound by the call of a set of men who assembled at the statehouse in Philadelphia, and assumed the name of the legislature of Pennsylvania; and some were prevented from voting by the violence of the party who were determined at all events to force down the measure. To such lengths did the tools of despotism carry their outrage, that in the night of the election for members of convention, in the city of Philadelphia, several of the subscribers (being then in the city to transact your business) were grossly abused, ill-treated and insulted while they were quiet in their lodgings, though they did not interfere, nor had any thing to do with the said election, but as they apprehend, because they were supposed to be adverse to the proposed constitution, and would not tamely surrender those sacred rights, which you had committed to their charge.

The convention met, and the same disposition was soon manifested in considering the proposed constitution, that had been exhibited in every other stage of the business. We were prohibited by an express vote of the convention, from taking any question on the separate articles of the plan, and reduced to the necessity of adopting or rejecting in *toto*.—'Tis true the majority permitted us to debate on each article, but restrained us from proposing amendments.—They also determined not to permit us to enter on the minutes our reasons of dissent against any of the articles, nor even on the final question our reasons of dissent against the whole. Thus situated we entered on the examination of the proposed system of government, and found it to be such as we could not adopt, without, as we conceived, surrendering up your dearest rights. We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; and closed our arguments by offering the following propositions to the convention.

1. The right of conscience shall be held inviolable; and neither the legislative, executive nor judicial powers of the United States shall have authority to alter, abrogate, or in fringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.

2. That in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states.

3. That in all capital and criminal prosecutions, a man has a right to demand the cause and nature of his accusation, as well in the federal courts, as in those of the several states; to be heard by himself and his counsel; to be confronted with the accusers and witnesses; to call for evidence in his favor, and a speedy trial by an impartial jury of his vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; and that no man be deprived

of his liberty, except by the law of the land or the judgment of his peers.

4. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

5. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.

6. That the people have a right to the freedom of speech, of writing and publishing their sentiments, therefore, the freedom of press shall not be restrained by any law of the United States.

7. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up: and that the military shall be kept under strict subordination to and be governed by the civil powers.

8. The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States not inclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.

9. That no law shall be passed to restrain the legislatures of the several states from enacting laws for imposing taxes, except imposts and duties on goods imported or exported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.

10. That the house of representatives be properly increased in number; that elections shall remain free; that the several states shall have power to regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of the Congress; and that elections of representatives be annual.

11. That the power of organizing, arming, and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

That the sovereignty, freedom and independency of the several states shall be retained, and every power, jurisdiction and right which is not by this constitution expressly delegated to the United States in Congress assembled.

12. That the legislative, executive, and judicial powers be kept separate; and to this end that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give, hereby the senators would be relieved from almost constant attendance; and also that the judges be made completely independent.

13. That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed, or made conformable to such treaty; neither shall any treaties be valid which are in contradiction to the constitution of the United States, or the constitutions of the several states.

14. That the judiciary power of the United States be confined to cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states—between a state and citizens of different states—between citizens claiming lands under grants of different states; and between a state or the citizen thereof and foreign states, and in criminal cases, to such only as are expressly enumerated in the constitution, and that the United States in Congress assembled, shall not have power to enact laws, which shall alter the laws of descents and distribution of the effects of deceased persons, the titles of lands or goods, or the regulation of contracts in the individual states.

After reading these propositions, we declared our willingness to agree to the plan, provided it was so amended as to meet these propositions, or something similar to them: and finally moved the convention to adjourn, to give the people of Pennsylvania time to consider the subject, and determine for themselves; but these were all rejected, and the final vote was taken, when our duty to you induced us to vote against the proposed plan, and to decline signing the ratification of the same.

During the discussion we met with many insults, and some personal abuse; we were not even treated with decency, during the sitting of the convention, by the persons in the gallery of the house; however, we flatter ourselves that in contending for the preservation of those invaluable rights you have thought proper to commit to our charge, we acted with a

spirit becoming freemen, and being desirous that you might know the principles which actuated our conduct, and being prohibited from inserting our reasons of dissent on the minutes of the convention, we have subjoined them for your consideration, as to you alone we are accountable. It remains with you whether you will think those inestimable privileges, which you have so ably contended for, should be sacrificed at the shrine of despotism, or whether you mean to contend for them with the same spirit that has so often baffled the attempts of an aristocratic faction, to rivet the shackles of slavery on you and your unborn posterity.

Our objections are comprised under three general heads of dissent, viz.

We dissent, first, because it is the opinion of the most celebrated writers on government, and confirmed by uniform experience, that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns.

If any doubt could have been entertained of the truth of the foregoing principle, it has been fully removed by the concession of *Mr. Wilson*, one of the majority on this question; and who was one of the deputies in the late general convention. In justice to him, we will give his own words; they are as follows, viz. "The extent of country for which the new constitution was required, produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical; to a middling territory (as Montesquieu has termed it) the monarchial; and to an extensive territory, the despotic form of government is best adapted. Regarding then the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment rose. For, we know that, altho' our constituents would chearfully submit to the legislative restraints of a free government, they would spurn at every attempt to shackle them with despotic power."And again in another part of his speech he continues.—"Is it probable that the dissolution of the state governments, and the establishment of one *consolidated empire* would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew that so extensive a territory could not be governed, connected, and preserved, but by the *supremacy of despotic power*. All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which in extent was far inferior to the dominion of America."

We dissent, secondly, because the powers vested in Congress by this constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the several states, and produce from their ruins one consolidated government, which from the nature of things will be *an iron handed despotism*, as nothing short of the supremacy of despotic sway could connect and govern these United States under one government.

As the truth of this position is of such decisive importance, it ought to be fully investigated, and if it is founded to be clearly ascertained; for, should it be demonstrated, that the powers vested by this constitution in Congress, will have such an effect as necessarily to produce one consolidated government, the question then will be reduced to this short issue, viz. whether satiated with the blessings of liberty; whether repenting of the folly of so recently asserting their unalienable rights, against foreign despots at the expence of so much blood and treasure, and such painful and arduous struggles, the people of America are now willing to resign every privilege of freemen, and submit to the dominion of an absolute government, that will embrace all America in one chain of despotism; or whether they will with virtuous indignation, spurn at the shackles prepared for them, and confirm their liberties by a conduct becoming freemen.

That the new government will not be a confederacy of states, as it ought, but one consolidated government, founded upon the destruction of the several governments of the states, we shall now shew.

The powers of Congress under the new constitution, are complete and unlimited over the *purse* and the *sword*, and are perfectly independent of, and supreme over, the state governments; whose intervention in these great points is entirely destroyed. By virtue of their power of taxation, congress may command the whole, or any part of the property of the people. They may impose what imposts upon commerce; they may impose what land taxes, poll taxes, excises, duties on all written instruments, and duties on every other article that they may judge proper; in short, every species of taxation, whether of an external or internal nature is comprised in section the 8th, of article the Ist, viz. "The congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States."

As there is no one article of taxation reserved to the state governments, the Congress may monopolise every source of revenue, and thus indirectly demolish the state governments, for without funds they could not exist, the taxes, duties and excises imposed by Congress may be so high as to render it impracticable to levy further sums on the same articles; but whether this should be the case or not, if the state governments should presume to impose taxes, duties or excises, on the same articles with Congress, the latter may abrogate and repeal the laws whereby they are imposed, upon the allegation that they interfere with the due collection of their taxes, duties, or excises, by virtue of the following clause, part of section 8th, article Ist. viz. "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

The Congress might gloss over this conduct by construing every purpose for which the state legislatures now lay taxes, to be for the *"general welfare,"* and therefore as of their ju[ris]diction.

And the supremacy of the laws of the United States is established by article 6th, viz. "That this constitution and the laws of the United States, which shall be made in pursuance thereof, and *all treaties* made, or which shall be made under, the authority of the United States, shall be the *supreme law* of the *land*; and *the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.*" It has been alledged that the words "pursuant to the constitution," are a restriction upon the authority of Congress; but when it is considered that by other sections they are invested with every efficient power of government, and which may be exercised to the absolute destruction of the state governments, without any violation of even the forms of the constitution, this seeming restriction, as well as every other restriction in it, appears to us to be nugatory and delusive; and only introduced as a blind upon the real nature of the government. In our opinion, "pursuant to the constitution," will be co-extensive with the *will* and *pleasure* of Congress, which, indeed, will be the only limitation of their powers.

We apprehend that two co-ordinate sovereignties would be a solecism in politics. That therefore as there is no line of distinction drawn between the general, and state governments; as the sphere of their jurisdiction is undefined, it would be contrary to the nature of things, that both should exist together, one or the other would necessarily triumph in the fullness of dominion. However the contest could not be of long continuance, as the state governments are divested of every means of defence, and will be obliged by "the supreme law of the land" *to yield at discretion.*

It has been objected to this total destruction of the state governments, that the existence of their legislatures is made essential to the organization of Congress; that they must assemble for the appointment of the senators and president general of the United States. True, the state legislatures may be continued for some years, as boards of appointment, merely, after they are divested of every other function, but the framers of the constitution foreseeing that the people will soon be disgusted with this solemn mockery of a government without power and usefulness, have made a provision for relieving them from the imposition, in section 4th, of article Ist, viz. "The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law make or alter such regulations; except as to the place of chusing senators.*"

As Congress have the controul over the time of the appointment of the president general, of the senators and of the representatives of the United States, they may prolong their existence in office, for life, by postponing the time of their election and appointment, from period to period, under various pretences, such as an apprehension of invasion, the factious disposition of the people, or any other plausible pretence that the occasion may suggest; and having thus obtained life-estates in the government, they may fill up the vacancies themselves, by their controul over the mode of appointment; with this exception in regard to the senators, that as the place of appointment for them, must, by the constitution, be in the particular state, they may depute some body in the respective states, to fill up the vacancies in the senate, occasioned by death, until they can venture to assume it themselves. In this manner, may the only restriction in this clause be evaded. By virtue of the foregoing section, when the spirit of the people shall be gradually broken; when the general government shall be firmly established, and when a numerous standing army shall render opposition vain, the Congress may compleat the system of despotism, in renouncing all dependance on the people, by continuing themselves, and children in the government.

The celebrated *Montesquieu*, in his *Spirit of the Laws*, vol. I, page 12th, says, "That in a democracy there can be no exercise of sovereignty, but by the suf-

frages of the people, which are their will; now the sovereigns will is the sovereign himself; the laws therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate in a republic in what manner, by whom, and concerning what suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern." The *time, mode* and *place* of the election of representatives, senators and president general of the United States, ought not to be under the controul of Congress, but fundamentally ascertained and established.

The new constitution, consistently with the plan of consolidation, contains no reservation of the rights and privileges of the state governments, which was made in the confederation of the year 1778, by article the 2d, viz. "That each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled."

The legislative power vested in Congress by the foregoing recited sections, is so unlimited in its nature; may be so comprehensive and boundless [in] its exercise, that this alone would be amply sufficient to annihilate the state governments, and swallow them up in the grand vortex of general empire.

The judicial powers vested in Congress are also so various and extensive, that by legal ingenuity they may be extended to every case, and thus absorb the state judiciaries, and when we consider the decisive influence that a general judiciary would have over the civil polity of the several states, we do not hesitate to pronounce that this power, unaided by the legislative, would effect a consolidation of the states under one government.

The powers of a court of equity, vested by this constitution, in the tribunals of Congress; powers which do not exist in Pennsylvania, unless so far as they can be incorporated with jury trial, would, in this state, greatly contribute to this event. The rich and wealthy suitors would eagerly lay hold of the infinite mazes, perplexities and delays, which a court of chancery, with the appellate powers of the supreme court in fact as well as law would furnish him with, and thus the poor man being plunged in the bottomless pit of legal discussion, would drop his demand in despair.

In short, consolidation pervades the whole constitution. It begins with an annunciation that such was the intention. The main pillars of the fabric correspond with it, and the concluding paragraph is a confirmation of it. The preamble begins with the words, "We the people of the United States," which is a style of a compact between individuals entering into a state of society, and not that of a confederation of states. The other features of consolidation, we have before noticed.

Thus we have fully established the position, that the powers vested by this constitution in Congress, will effect a consolidation of the states under one government, which even the advocates of this constitution admit, could not be done without the sacrifice of all liberty.

We dissent, Thirdly, Because if it were practicable to govern so extensive a territory as these United States includes, on the plan of a consolidated government, consistent with the principles of liberty and the happiness of the people, yet the construction of this constitution is not calculated to attain the object, for independent of the nature of the case, it would of itself, necessarily, produce a despotism, and that not by the usual gradations, but with the celerity that has hitherto only attended revolutions effected by the sword.

To establish the truth of this position, a cursory investigation of the principles and form of this constitution will suffice.

The first consideration that this review suggests, is the omission of a BILL of RIGHTS, ascertaining and fundamentally establishing those unalienable and personal rights of men, without the full, free, and secure enjoyment of which there can be no liberty, and over which it is not necessary for a good government to have the controul. The principal of which are the rights of conscience, personal liberty by the clear and unequivocal establishment of the writ of *habeas corpus*, jury trial in criminal and civil cases, by an impartial jury of the vicinage or county, with the common-law proceedings, for the safety of the accused in criminal prosecutions; and the liberty of the press, that scourge of tyrants, and the grand bulwark of every other liberty and privilege; the stipulations heretofore made in favor of them in the state constitutions, are entirely superceded by this constitution.

The legislature of a free country should be so formed as to have a competent knowledge of its constituents, and enjoy their confidence. To produce these essential requisites, the representation ought to be fair, equal, and sufficiently numerous, to possess the same interests, feelings, opinions, and views, which the people themselves would possess, were they all assembled; and so numerous as to prevent bribery and undue influence, and so responsible to the people, by frequent and fair elections, as to prevent their neglecting or sacrificing the

views and interests of their constituents, to their own pursuits.

We will now bring the legislature under this constitution to the test of the foregoing principles, which will demonstrate, that it is deficient in every essential quality of a just and safe representation.

The house of representatives is to consist of 65 members; that is one for about every 50,000 inhabitants, to be chosen every two years. Thirty-three members will form a quorum for doing business; and 17 of these, being the majority, determine the sense of the house.

The senate, the other constituent branch of the legislature, consists of 26 members being *two* from each state, appointed by their legislatures every six years—fourteen senators make a quorum; the majority of whom, eight, determines the sense of that body; except in judging on impeachments, or in making treaties, or in expelling a member, when two thirds of the senators present, must concur.

The president is to have the controul over the enacting of laws, so far as to make the concurrence of *two* thirds of the representatives and senators present necessary, if he should object to the laws.

Thus it appears that the liberties, happiness, interests, and great concerns of the whole United States, may be dependent upon the integrity, virtue, wisdom, and knowledge of 25 or 26 men—How inadequate and unsafe a representation! Inadequate, because the sense and views of 3 or 4 millions of people diffused over so extensive a territory comprising such various climates, products, habits, interests, and opinions, cannot be collected in so small a body; and besides, it is not a fair and equal representation of the people even in proportion to its number, for the smallest state has as much weight in the senate as the largest, and from the smallness of the number to be chosen for both branches of the legislature; and from the mode of election and appointment, which is under the controul of Congress; and from the nature of the thing, men of the most elevated rank in life, will alone be chosen. The other orders in the society, such as farmers, traders, and mechanics, who all ought to have a competent number of their best informed men in the legislature, will be totally unrepresented.

The representation is unsafe, because in the exercise such great powers and trusts, it is so exposed to corruption and undue influence, by the gift of the numerous places of honor and emoluments at the disposal of the executive; by the arts and address of the great and designing; and by direct bribery.

The representation is moreover inadequate and unsafe, because of the long terms for which it is appointed, and the mode of its appointment, by which Congress may not only controul the choice of the people, but may so manage as to divest the people of this fundamental right, and become self-elected.

The number of members in the house of representatives *may* be increased to one for every 30,000 inhabitants. But when we consider, that this cannot be done without the consent of the senate, who from their share in the legislative, in the executive, and judicial departments, and permanency of appointment, will be the great efficient body in this government, and whose weight and predominancy would be abridged by an increase of the representatives, we are persuaded that this is a circumstance that cannot be expected. On the contrary, the number of representatives will probably be continued at 65, although the population of the country may swell to treble what it is now; unless a revolution should effect a change.

We have before noticed the judicial power as it would effect a consolidation of the states into one government; we will now examine it, as it would affect the liberties and welfare of the people, supposing such a government were practicable and proper.

The judicial power, under the proposed constitution, is founded on the well-known principles of the *civil law*, by which the judge determines both on law and fact, and appeals are allowed from the inferior tribunals to the superior, upon the whole question; so that *facts* as well as *law*, would be re-examined, and even new facts brought forward in the court of appeals; and to use the words of a very eminent Civilian—"The cause is many times another thing before the court of appeals, than what it was at the time of the first sentence."

That this mode of proceeding is the one which must be adopted under this constitution, is evident from the following circumstances:—Ist. That the trial by jury, which is the grand characteristic of the common law, is secured by the constitution, only in criminal cases.—2d. That the appeal from both *law* and *fact* is expressly established, which is utterly inconsistent with the principles of the common law, and trials by jury. The only mode in which an appeal from law and fact can be established, is, by adopting the principles and practice of the civil law; unless the United States should be drawn into the absurdity of calling and swearing juries, merely for the purpose of contradicting their verdicts, which would render juries contemptible and worse than useless.—3d. That the courts to be established would decide on all cases *of law and equity*, which is a well

known characteristic of the civil law, and these courts would have conusance not only of the laws of the United States and of treaties, and of cases affecting ambassadors, but of all cases of *admiralty and maritime jurisdiction*, which last are matters belonging exclusively to the civil law, in every nation in Christendom.

Not to enlarge upon the loss of the invaluable right of trial by an unbiased jury, so dear to every friend of liberty, the monstrous expence and inconveniences of the mode of proceedings to be adopted, are such as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such that few men of moderate fortune can endure the expence of; the poor man must therefore submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned judge *Blackstone*, that a question only on the property of an ox, of the value of *three* guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of session, the highest court in that part of Great Britain, by way of *appeal* to the house of lords, *where* the question of law and fact was finally determined. He adds, that no pique or spirit could in the court of king's bench or common pleas at Westminster, have given continuance to such a cause for a tenth part of the time, nor have cost a twentieth part of the expence. Yet the costs of king's bench and common pleas in England, are infinitely greater than those which the people of this country have ever experienced. We abhor the idea of losing the transcendant privilege of trial by jury, with the loss of which, it is remarked by the same learned author, that in Sweden, the liberties of the commons were extinguished by an aristocratic senate: and that *trial by jury* and the liberty of the people went out together. At the same time we regret the intolerable delay, the enormous expences and infinite vexation to which the people of this country will be exposed from the voluminous proceedings of the courts of civil law, and especially from the appellate jurisdiction, by means of which a man may be drawn from the utmost boundaries of this extensive country to the seat of the supreme court of the nation to contend, perhaps with a wealthy and powerful adversary. The consequence of this establishment will be an absolute confirmation of the power of aristocratical influence in the courts of justice: for the common people will not be able to contend or struggle against it.

Trial by jury in criminal cases may also be excluded by declaring that the libeller for instance shall be liable to an action of debt for a specified sum; thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws by information (which will be classed among civil causes) will at the civil law be within the resort of a court, where no jury intervenes. Besides, the benefit of jury trial, in cases of a criminal nature, which cannot be evaded, will be rendered of little value, by calling the accused to answer far from home; there being no provision that the trial be by a jury of the neighbourhood or country. Thus an inhabitant of Pittsburgh, on a charge of crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the Delaware, and so *vice versa*. To conclude this head: we observe that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices, during the pleasure of the president and senate, and as they may derive their support in part from fees, alterable by the legislature.

The next consideration that the constitution presents, is the undue and dangerous mixture of the powers of government; the same body possessing legislative, executive, and judicial powers. The senate is a constituent branch of the legislature; it has judicial power in judging on impeachments, and in this case unites in some measure the characters of judge and party, as all the principal officers are appointed by the president-general, with the concurrence of the senate and therefore they derive their offices in part from the senate. This may biass the judgments of the senators and tend to screen great delinquents from punishments. And the senate has, moreover, various and great executive powers, viz. in concurrence with the president-general, they form treaties with foreign nations, that may controul and abrogate the constitutions and laws of the several states. Indeed, there is no power, privilege or liberty of the state governments, or of the people, but what may be affected by virtue of this power. For all treaties, made by them, are to be the "supreme law of the land, any thing in the constitution or laws of any state, to the contrary notwithstanding."

And this great power may be exercised by the president and 10 senators (being two-thirds of 14, which is a quorum of that body). What an inducement would this offer to the ministers of foreign powers to compass by bribery *such concessions* as could not otherwise be obtained. It is the unvaried usage of all free states, whenever treaties interfere

with the positive laws of the land, to make the intervention of the legislature necessary to give them operation. This became necessary, and was afforded by the parliament of Great-Britain. In consequence of the late commercial treaty between that kingdom and France—As the senate judges on impeachments, who is to try the members of the senate for the abuse of this power! And none of the great appointments to office can be made without the consent of the senate.

Such various, extensive, and important powers combined in one body of men, are inconsistent with all freedom; the celebrated Montesquieu tells us, that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or *senate* should enact tyrannical laws, to execute them in a tyrannical manner."

"Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul: for the judge would then be legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. There would be an end of every thing, were the same man, or the same body of the nobles, or of the people, to exercise those three powers; that of enacting laws; that of executing the public resolutions; and that of judging the crimes of differences of individuals."

The president general is dangerously connected with the senate; his coincidence with the views of the ruling junto in that body, is made essential to his weight and importance in the government, which will destroy all independency and purity in the executive department, and having the power of pardoning without the concurrence of a council, he may skreen from punishment the most treasonable attempts that may be made on the liberties of the people, when instigated by his coadjutors in the senate. Instead of this dangerous and improper mixture of the executive with the legislative and judicial, the supreme executive powers ought to have been placed in the president, with a small independent council, made personally responsible for every appointment to office or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step.

We have before considered internal taxation, as it would effect the destruction of the state governments, and produce one consolidated government. We will now consider that subject as it affects the personal concerns of the people.

The power of direct taxation applies to every individual, as congress, under this government, is expressly vested with the authority of laying a capitation or poll tax upon every person to any amount. This is a tax that, however oppressive in its nature, and unequal in its operation, is certain as to its produce and simple in its collection; it cannot be evaded like the objects of imposts or excise, and will be paid, because all that a man hath will he give for his head. This tax is so congenial to the nature of despotism, that it has ever been a favorite under such governments. Some of those who were in the late general convention from this state have long laboured to introduce a poll-tax among us.

The power of direct taxation will further apply to every individual, as congress may tax land, cattle, trades, occupations, etc. in any amount, and every object of internal taxation is of that nature, that however oppressive, the people will have but this alternative, except to pay the tax, or let their property be taken, for all resistance will be in vain. The standing army and select militia would enforce the collection.

For the moderate exercise of this power, there is no controul left in the state governments, whose intervention is destroyed. No relief, or redress of grievances can be extended, as heretofore by them. There is not even a declaration of RIGHTS to which people may appeal for the vindication of their wrongs in the court of justice. They must therefore, implicitly obey the most arbitrary laws, as the worst of them will be pursuant to the principles and form of the constitution, and that strongest of all checks upon the conduct of administration, *responsibility to the people*, will not exist in this government. The permanency of the appointments of senators and representatives, and the controul the congress have over their election, will place them independent of the sentiments and resentments of the people, and the administration having a greater interest in the government than in the community, there will be no consideration to restrain them from oppression and tyranny. In the government of this state, under the old confederation, the members of the legislature are taken from among the people, and their interests and welfare are so inseparably connected with those of their constituents, that they can derive no advantage from oppressive laws and taxes, for they would suffer in common with their fellow citizens; would participate in the burthens they impose on the community, as they must return to the common level, after a short period; and notwithstanding every

ex[er]tion of influence, every means of corruption, a necessary rotation excludes them from permanency in the legislature.

This large state is to have but ten members in that Congress which is to have the liberty, property and dearest concerns of every individual in this vast country at absolute command and even these ten persons, who are to be our only guardians; who are to supercede the legislature of Pennsylvania, will not be of the choice of the people, nor amenable to them. From the mode of their election and appointment they will consist of the lordly and high-minded; of men who will have no congenial feelings with the people, but a perfect indifference for, and contempt of them; they will consist of those harpies of power, that prey upon the very vitals; that riot on the miseries of the community. But we will suppose, although in all probability it may never be realized in fact, that our deputies in Congress have the welfare of their constituents at heart, and will exert themselves in their behalf, what security could even this afford; what relief could they extend to their oppressed constituents? To attain this, the majority of the deputies of the twelve other states in Congress must be alike well disposed; must alike forego the sweets of power, and relinquish the pursuits of ambition, which from the nature of things is not to be expected. If the people part with a responsible representation in the legislature, founded upon fair, certain and frequent elections, they have nothing left they can call their own. Miserable is the lot of that people whose every concern depends on the WILL and PLEASURE of their rulers. Our soldiers will become Janissaries, and our officers of government Bashaws; in short, the system of despotism will soon be compleated.

From the foregoing investigation, it appears that the Congress under this constitution will not possess the confidence of the people, which is an essential requisite in a good government; for unless the laws command the confidence and respect of the great body of the people, so as to induce them to support them, when called on by the civil magistrate, they must be executed by the aid of a numerous standing army, which would be inconsistent with every idea of liberty; for the same force that may be employed to compel obedience to good laws, might and probably would be used to wrest from the people their constitutional liberties. The framers of this constitution appear to have been aware of this great deficiency; to have been sensible that no dependence could be placed on the people for their support: but on the contrary, that the government must be executed by force. They have therefore made a provision for this purpose in a permanent STANDING ARMY, and a MILITIA that may be subjected to as strict discipline and government.

A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of the most oppressive taxes, and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia may be made instrumental to the destruction of all liberty, both public and private; whether of a personal, civil or religious nature.

First, the personal liberty of every man probably from sixteen to sixty years of age, may be destroyed by the power Congress have in organizing and governing of the militia. As militia they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind, and to death itself, by the sentence of a court martial: To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

Secondly, The rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of bearing arms. These compose a respectable proportion of the community in the state. This is the more remarkable, because even when the distresses of the late war, and the evident disaffection of many citizens of that description, inflamed our passions, and when every person, who was obliged to risque his own life, must have been exasperated against such as on any account kept back from the common danger, yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our state constitution made the most express and decided declaration and stipulations in favour of the rights of conscience: but now when no necessity exists, those dearest rights of men are left insecure.

Thirdly, The absolute command of Congress over the militia may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppressing, and aided by the standing army, they will no doubt be successful in subduing their liberty and independency; but in so doing, although the magnanimity of their minds

will be extinguished, yet the meaner passions of resentment and revenge will be increased, and these in turn will be the ready and obedient instruments of despotism to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow citizens, and on one another. This power can be exercised not only without violating the constitution, but in strict conformity with it; it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burthensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department: judges, collectors, taxgatherers, excisemen and the whole host of revenue officers will swarm over the land, devouring the hard earnings of the industrious. Like the locusts of old, impoverishing and desolating all before them.

We have not noticed the smaller, nor many of the considerable blemishes, but have confined our objections to the great and essential defects; the main pillars of the constitution; which we have shewn to be inconsistent with the liberty and happiness of the people, as its establishment will annihilate the state governments, and produce one consolidated government that will eventually and speedily issue in the supremacy of despotism.

In this investigation, we have not confined our views to the interests or welfare of this state, in preference to the others. We have overlooked all local circumstances—we have considered this subject on the broad scale of the general good; we have asserted the cause of the present and future ages: the cause of liberty and mankind.

Nathaniel Breading
John Smilie
Richard Baird
Adam Orth
John A. Hanna
John Whitehill
John Harris
Robert Whitehill
John Reynolds
Jonathan Hoge
Nicholas Lutz
John Ludwig,
Abraham Lincoln
John Bishop
Joseph Heister
Joseph Powel
James Martin
William Findley
John Baird
James Edgar
William Todd.

Select Annotated Bibliography

by Earl P. Bell

This select annotated bibliography provides teachers and students with additional information on "James Madison and *The Federalist Papers*." The appeal of these readings to students is the central concern of these recommendations. Thus, the bibliography includes several short articles in popular magazines. In most cases the selections from popular magazines are taken from scholars of the highest reputation.

Several of the General Bibliographic Sources offer teachers comprehensive research and writing about James Madison, the Constitution of the United States, and *The Federalist Papers*. A teacher interested in providing students with a rich reservoir of information should purchase or secure through interlibrary loan the following books.

Levy, Leonard W., and Dennis J. Mahoney, eds. *Framing and Ratification of the Constitution*. New York: Macmillan, 1987. Comprehensive coverage of all issues by twenty-one scholars on the period. Readable by most high school students.

Levy, Leonard W., Kenneth L. Karst, and Dennis J. Mahoney, eds. *Encyclopedia of the American Constitution*. 4 Vols. New York: Macmillan, 1986. The most comprehensive source of information on all subjects and important individuals. A brilliant selection of leading experts on the various subjects; highly readable by all students. Offers a short chronologically developed description for each period on Constitutional history from the colonial period to the present.

Peck, Robert S., and Ralph S. Pollock, eds. *The Blessings of Liberty: Bicentennial Lectures at the National Archives*. Chicago: American Bar Association, 1985. Clearly written short articles by sixteen scholars.

In combination, these resources provide comprehensive coverage of the 1780s, the Constitutional Convention, the ratification of the Constitution, *The Federalist Papers*, the Bill of Rights, and the individuals providing leadership from 1776 to 1800.

The rest of this bibliography is organized in terms of five topics:

I. James Madison and the Constitutional Convention.
II. Editions of *The Federalist*.
III. James Madison and Ratification of the Constitution.
IV. James Madison: Biographies and Selections of His Writings.
V. James Madison and The Bill of Rights.

I. James Madison and the Constitutional Convention

A. The Constitutional Convention

Bowen, Catherine Drinker. *Miracle at Philadelphia: The Story of the Constitution*. Boston: Little Brown, 1986. Considered by many historians to be the best narrative history written on the Convention. Can be used by all students.

McDonald, Forrest. *E Pluribus Unum: The Formation of the American Republic, 1776 - 1790*. Indianapolis: Liberty Press, 1979. A witty, well-written account of the issues and compromises at the Convention. Contains very good descriptions of the delegates attending.

Roche, John P. "The Constitutional Convention of 1787." In *Encyclopedia of the American Constitution*. Vol. 1. Edited by Leonard W. Levy et al. New York: Macmillan, 1986. Describes the events of the 1780s leading to the Convention. The role of the leading Federalists, including Madison, the issues and debates, the resolution of the separation of powers, and the compromises producing the document are presented.

Van Doren, Carl. *The Great Rehearsal: The Story of the Making and Ratifying of the Constitution of the United States*. New York: Penguin Books, 1986. Still one of the best written day-to-day accounts of the Constitutional Convention of 1787. Tells the story of the men, the ideas, and the arguments producing our form of government. Can be used by all students.

B. Intellectual Origins of the Constitution

Greene, Jack P. *The Intellectual Heritage of the Constitutional Era: The Delegates' Library*. Philadelphia: Library Company of Philadelphia, 1986. Brilliantly organized by the author according to the liberal tradition, the English jurisprudential tradition, the literature on political economy and improvement, the civic humanist tradition, the literature of the Enlightenment, the Scottish moral and historical tradition, and other American traditions. Usable by teachers and Advanced Placement students.

McDonald, Forrest. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution*. Kansas: University Press of Kansas, 1985. Excellent coverage of the rights of Englishmen, the political theory available to the Founders, the lessons of experience, and the principal interests of the Framers of the Constitution. The best single volume on the origins of the Constitution. Usable by teachers and Advanced Placement students.

Wood, Gordon. *The Creation of the American Republic, 1776-1787*. Chapel Hill: University of North Carolina Press, 1969. Contains strong explanations of liberty, equality, mixed governments, and republicanism. Very well written. Usable by teachers and Advanced Placement students.

II. Editions of *The Federalist*

A. Older Editions in Print

Earle, Edward Mead, ed. *The Federalist*. New York: Random House, 1941. In the Modern Library College Editions, used by tutors at St. Johns College, Annapolis, MD.

B. Newer Editions of *The Federalist*

Chadwick, Michael L., ed. *The Federalist*. Springfield: Global Affairs Publishing Company, 1987. Provides excellent headings for students throughout *The Federalist Papers*; a unique feature, making the use of the papers with students easier.

Cooke, Jacob E., ed. *The Federalist*. Middletown, CT: Wesleyan University Press, 1961. Considered by historians as the most complete, accurate, and definitive edition of the papers. An excellent introduction and notes by Cooke. Also used by *The Federalist Concordance* (see Engeman annotation below) for referencing various words contained in the papers.

Fairfield, Roy. P., ed. *The Federalist Papers*. Baltimore: Johns Hopkins University Press, 1986. Fairfield has selected 51 of the most important *Federalist Papers*. He provides a detailed historical and analytical background, and offers guidance on the writing about *The Federalist Papers*.

Kramnick, Isaac, ed. *The Federalist Papers*. New York: Penguin Books, 1987. Provides an excellent introduction to ideas and issues in the papers.

Rossiter, Clinton, ed. *The Federalist Papers*. New York: New American Library, 1961. An excellent introduction with a table of contents and index of ideas by Rossiter. The most widely used edition.

Wills, Garry, ed. *The Federalist Papers*. New York: Bantam Books, 1982. Contains an introduction by Wills and a good glossary.

C. Concordance

Engeman, Thomas S., Edward J. Erler, and Thomas B. Hofeller, eds. *The Federalist Concordance*. Chicago: University of Chicago Press, 1988. Offers an alphabetical index of words appearing in *The Federalist Papers*. It locates "each occurrence of a word by paper number, author, page, and line in the Cooke edition, (Wesleyan University Press, 1987)." An excellent aid for teachers.

III. James Madison and Ratification of the Constitution

A. Interpretations of *The Federalist Papers*

Banning, Lance. "The Federalist Papers." In *The Encyclopedia of American Political History*. Vol. 2. Edited by Jack P. Greene. New York: Scribner, 1984. Primarily a historically descriptive essay covering the purpose, design, effectiveness, and historical significance of *The Federalist Papers*. Usable by all students.

Carey, George W. *The Federalist: Design for a Constitutional Republic*. Champaign: University of Illinois Press, 1989. The author analysizes the political theory of constitutional government in *The Federalist*.

Diamond, Martin. "The Federalist." In *History of Political Philosophy*. 3d. ed. Edited by Leo Strauss and Joseph Cropsey. Chicago: The University of Chicago Press, 1987. The author emphasizes *The Federalist Papers* were written to persuade "the widest electorate (and) the able and educated men (who were delegates)." The author comments the papers are remarkable for addressing immediate political problems as well as theoretical matters of long-term importance. Written by one of the most important scholars on the meaning of the papers. Usable by teachers and Advanced Placement students.

Epstein, David P. *The Political Theory of the Federalist*. Chicago: The University of Chicago Press, 1984.

The author claims that "Publius" was a defender of natural rights and a promoter of the public interest through good government. Usable by teachers and the most able Advanced Placement students.

_____."The Federalist." In *Encyclopedia of the American Constitution*. Vol. 2. Edited by Leonard W. Levy et al. New York: Macmillan, 1986. Describes the writing of the 85 essays by Hamilton, Madison and Jay. The essays are grouped by issue, essay numbers 10 and 78 are highlighted. Usable by all students.

Furtwangler, Albert. *The Authority of Publius: A Reading of The Federalist Papers*. Ithaca, NY: Cornell University Press, 1984. Claims that *The Federalist Papers*, "modified the tradition of Eighteenth Century newspaper campaigning, marked a turn in the way Constitutional questions were presented to the public". He emphasized the literary strategies for analyzing the papers. Usable by teachers and the most able Advanced Placement students.

Howe, Daniel W. "The Language of Faculty Psychology in *The Federalist Papers*." In *Conceptual Change and the Constitution*, edited by Terence Ball and J.G.A. Pocock. Lawrence: University Press of Kansas, 1988. Written from the perspective of intellectual history, Howe seeks to explain *The Federalist Papers* within the context of the period in which they were written. Usable by teachers and the most able Advanced Placement students.

White, Morton. *Philosophy, The Federalist and the Constitution*. New York: Oxford University Press, 1987. Analyzes the major philosophical ideas contained in *The Federalist Papers*; examines the interlocking theory of knowledge, theory of history, psychology, metaphysics, theory of action, and ethics used by Hamilton, Madison, and Jay in defense of the Constitution. Usable by teachers and the most able Advanced Placement students.

B. The Federalist-Anti-Federalist Debate: Edited Primary Documents

Kaminski, John P., and Richard Leffler, eds. *Federalists and Antifederalists: The Debate Over Ratification of the Constitution*. Madison, WI: Madison House Publishers, 1989. This is an excellent collection of writings by the leading Anti-Federalists and Federalists. Documents are organized around key ideas in the 1787-1788 debate on the ratification of the Constitution.

Kammen, Michael, ed. *Origins of the American Constitution: A Documentary History*. New York: Penguin Books, 1986. Uses correspondence and documents to analyze the genesis of the United States Constitution, the Federalist - Anti-Federalist Debate; and the completing as well as implementing of the Constitution. Usable by all students.

Ketcham, Ralph, ed. *The Anti-Federalist Papers and the Constitutional Convention Debates: The Clashes and the Compromises That Gave Birth to Our Form of Government*. New York: New American Library, 1986. An excellent historical background provided in the introduction on the 1780s, the Constitutional Convention, the ratification contest, Federalist principles, and Anti-Federalist political thought. Part One offers documents on the federal convention; Part Two provides original sources on the ratification contest. Usable by all students.

Storing, Herbert J., ed. *The Anti-Federalist: Writings by the Opponents of the Constitution*. Chicago: University of Chicago Press, 1985. Provides comprehensive speeches and writings from the Anti-Federalists in Pennsylvania, Massachusetts, Maryland, Virginia, and New York. Excellent selection and editing by Murray Dry. Usable by all students.

C. The Federalist-Anti-Federalist Debate: Secondary Sources

Dry, Murray. "The Case Against Ratification: Anti-Federalists Constitutional Thought." In *The Framing and Ratification of the Constitution*, edited by Leonard W. Levy and Denis Mahoney. New York: Macmillan, 1987. Identifies the men comprising the Anti-Federalist, explains the Anti-Federalist understanding of republican government, and Anti-Federalist proposals for Constitutional change. Usable by all students.

Epstein, David F. "The Case for Ratification: Federalist Constitutional Thought." In *The Framing and Ratification of the Constitution*, edited by Leonard W. Levy and Dennis J. Mahoney. New York: Macmillan, 1987. Analyzes the most famous Federalist writings by Hamilton, Madison, and Jay under the pen name "Publius"; the Federalist attack on the government under the Articles of Confederation; the Federalist arguments concerning military preparedness; and their ideas about good government. Usable by all students.

Main, Jackson Turner. *The Antifederalist: Critics of the Constitution*, 1781-1789. New York: W.W. Norton, 1974. Continues as one of the clearest explanations of arguments offered by those men opposing the creation of a stronger central government; offers considerable insight into the debate, section by section and state by state. Usable by all students.

Storing, Herbert. J. *What the Anti-Federalists Were For: The Political Thought of the Opponents of the Consti-*

tution. Chicago: University of Chicago Press, 1981. The best brief, narrative description of the arguments of the Anti-Federalists. Contains an excellent short chapter on the difficulty of classifying Anti-Federalists as conservatives. Also includes a clear chapter explaining their belief in a small republic as offering the best opportunity for realizing an effective republican government. Usable by all students.

IV. James Madison: Biographies and Selections of his Writings

A. Biographies and Issues about Madison

Alley, Robert S., ed. *James Madison on Religious Liberty*. Buffalo: Prometheus Books, 1985. A collection of essays on Madison's views of religious liberty, the separation of church and state, and the Bill of Rights. Includes selected Madison papers on relevant issues, with a strong section on the legacy of Madison. Usable by teachers and Advanced Placement students.

Banning, Lance. "James Madison." In *Encyclopedia of the American Constitution*. Vol. 3. Edited by Leonard W. Levy, et al. New York: Macmillan, 1986. Provides a chronological description of Madison's life, his public service in Virginia and in the Continental Congress. Also describes his preparation for and participation in the Constitutional Convention; his involvement in the ratification, and his efforts to secure passage of a Bill of Rights. Usable by all students.

Ketcham, Ralph. *James Madison: A Biography*. New York: Macmillan, 1971. One of the best one volume biographies on Madison. Out of print.

McCoy, Drew. *The Last of the Fathers: James Madison and the Republican Legacy*. New York: Cambridge University Press, 1989. Excellent on the temperament and character of Madison. The best analysis of Madison's views and actions on slavery. Good on his views of Jacksonian Democracy. Provides a balanced evaluation of Madison's public service. Usable by all students.

_____. *The Elusive Republic: Political Economy in Jeffersonian America*. Chapel Hill: University of North Carolina Press, 1980. A history of the revolutionary generation's efforts to reconcile classical republicanism with the emerging commercial society. Analyzes Jefferson's and Madison's fears about excessive economic development. An excellent treatment of the changing relationship between territorial expansion and republicanism. Usable by all students.

Morgan, Robert J. *James Madison on the Constitution and the Bill Rights*. Westport, CT: Greenwood Press, 1988. Contends that it was Madison's interest in preserving the union and republican government, not curbing democracy, that motivated him in the 1780s and 1790s. Usable by teachers and Advanced Placement students.

Riemer, Neal. *James Madison: Creating the American Constitution*, Washington, DC: Congressional Quarterly, Inc., 1986. Focuses on the political theory of James Madison and his efforts to achieve republican government in a large state. Centers on Madison's ideas about how a republican government should respond to disunion, large size, faction, and anti-republican danger. Usable by teachers and the most able students.

Rutland, Robert A. *James Madison: The Founding Father*. New York: Macmillan, 1987. A biography of Madison beginning in 1787, describes the creation of *The Federalist Papers*; Madison's participation in the First Congress; and other crucial public service. Probably the best of the current biographies on Madison.

Schultz, Harold S. *James Madison*. Boston: Twayne Publishers, 1971. An excellent brief biography of Madison covering all aspects of his public career. Out of print.

B. Edited Writings of James Madison

Meyers, Marvin, ed. *The Mind of the Founder: Sources of Political Thought of James Madison*. Hanover, NH: University Press of New England, 1981. The best one-volume collection of Madison's important writings with an excellent introductory analysis by Meyers. Selections are developed chronologically, following Madison's public career.

Padover, Saul. *The Forging of the American Federalist: Selected Writings of James Madison*. New York: Harper and Row, 1966. Another strong selection of Madison's writings. Out of print.

Peterson, Merrill D., ed. *James Madison: A Biography in His Own Words*. New York: Harper and Row, 1974. An excellent selection of writings by a noted Jefferson scholar. Out of Print.

V. James Madison and the Bill of Rights

A. Articles

Davis, David Brion. "The Significance of Excluding Slavery from the Old Northwest in 1787." *Indiana Magazine of History 84* (March 1988). Special Issue on the Northwest Ordinance. Excellent on civil rights and liberties issues affecting slaves in the Northwest Ordinance. Usable by all students.

Franklin, John Hope. "Slavery and the Constitution." In *The Encyclopedia of the American Constitution*. Vol. 4. Edited by Leonard Levy et al., New York: Macmillan, 1986. Excellent brief discussion of the debate over slavery from the Declaration of Independence to the Thirteenth Amendment. Includes an analysis of the writing of the state constitutions, the Northwest Ordinance, the Constitutional Convention, the slave trade, the Fugitive Slave Law of 1793, the Missouri Compromise, personal liberty laws, abolition, the Fugitive Slave Law of 1850, the Dred Scott decision, and the Emancipation Proclamation. Usable by all students.

Levy, Leonard W. "The Bill of Rights (The United States)." In *Encyclopedia of the American Constitution*. Vol. 1. Edited by Leonard W. Levy et al. New York: Macmillan, 1986. Fine description of factors leading to a Bill of Rights from the end of the Constitutional Convention to its passage in 1791. Usable by all students.

Rakove, Jack N. "James Madison and the Bill of Rights." *this Constitution* 18 (Spring/Summer 1988). Excellent, short overview of how the issue developed and Madison's participation in it. Usable by all students.

Rutland, Robert A. "George Mason's 'Objections' and the Bill of Rights." *this Constitution* 18 (Spring/Summer 1988). Very good on the last days of the Constitutional Convention and the roles of Mason, Sherman, Henry, Jefferson, and Madison. Usable by all students.

B. Books

Brant, Irving. *The Bill of Rights: Its Origins and Meaning*. New York: Bobbs-Merrill, 1965. Brant, a leading Madison scholar, contends that the primary support for the Bill of Rights came from "state-minded politicans who hoped to defeat the Constitution altogether, or had dreams of a second convention." Out-of-print.

Levy, Leonard W. *Freedom of Speech and Press in Early American History: The Legacy of Suppression*. New York: Harper & Row, 1963. Argues that the drafters of the state constitutions cared very little about protecting their fellow citizen's rights; that the understanding during the period of civil rights was very weak. Excellent on the contradictory views held by Anti-Federalists on civil rights. Usable by all students. Out of print.

_____. *Constitutional Opinions: Aspects of the Bill of Rights*. New York: Oxford University Press, 1986. An excellent selection of Levy's essays on the Bill of Rights. Especially strong is Chapter 6, "The Bill of Rights," which provides a detailed description of Madison's involvement with the Bill of Rights from the last days in the Constitutional Convention until their passage in 1791. This essay also appears in *The Encyclopedia of American Political History*, edited by Jack P. Greene. New York, 1984. Excellent for use with all students.

Rutland, Robert A. *The Birth of the Bill of Rights, 1776-1791*. Hanover, NH: University Press of New England, 1983. Very strong on Madison and the evolution of the Bill of Rights. Also good on the Bills of Rights written in the several states. Credits the Anti-Federalists with providing the pressure during the ratification fight to produce Bill of Rights.

Schwartz, Bernard. *The Great Rights of Mankind: A History of the American Bill of Rights*. New York: Oxford University Press, 1977. He suggests that James Wilson's "State House" speech of October 6, 1787, established the basis for the Federalist response that a Bill of Rights was unnecessary because the government under the Constitution was one of limited and enumerated powers. Very good on all issues. Out of print.

C. Bibliography on the Bill of Rights

Hutson, James H. "The Birth of the Bill of Rights: The State of Current Scholarship." *Prologue: Journal of the National Archives*. Fall, 1988. Issue No. 20. Washington: U. S. National Archive and Records Administration. An excellent summary of the research on the Bill of Rights since 1955. Provides annotation on all relevant books and articles. Concludes that the scholarship on the Bill of Rights remains inadequate as of the present date, without a scholar who has tied all aspects of the topic into a coherent picture. Usable by teachers.

ERIC Resources

ERIC (Educational Resources Information Center) is managed by the Office of Educational Research and Improvement (OERI) of the U.S. Department of Education. ERIC includes a nationwide network of sixteen clearinghouses, each one specializing in a different subject associated with education. The ERIC Clearinghouse for Social Studies/Social Science Education (ERIC/ChESS) is located at the Social Studies Development Center of Indiana University.

Items in the following list were selected from the ERIC database. They are available in microfiche and/or paper copies from the ERIC Document Reproduction Service (EDRS). For information about prices and purchasing procedures contact EDRS, 3900 Wheeler Avenue, Alexandria, VA 22304; telephone numbers are (800) 227-3742 or (703) 823-0500. Abstracts of documents in the ERIC database are announced monthly by the U.S. Department of Education in *Resources in Education*. ERIC documents are available for viewing in microfiche at libraries that subscribe to the ERIC collection. Use the ED numbers of documents in the following list to identify and obtain these items in the ERIC database.

The ERIC documents listed below are representatives of the large number of items in the ERIC database on the writing and ratifying of the U.S. Constitution. Items in this list are directly related to the contents of this volume on the ideas of James Madison in *The Federalist*.

Burns, Roger. *A More Perfect Union: The Creation of the United States Constitution*. Washington, DC: National Archives and Records Service, 1978. ED 247 177.

Burroughs, Wynell G., and Jean West Mueller. *Using Documents to Teach the Constitution*. Washington, DC: National Archives and Records Service, 1986. ED 273 547.

Command Information Division. *Bicentennial of the Constitution: A Resource Guide*. Washington, DC: Department of the Army, 1988. ED 299 182.

Command Information Division. *Bicentennial of the Constitution: A Resource Guide, Supplement: Ratification of the Constitution*. Washington, DC: Department of the Army, 1988. ED 302 441.

Hearst Report. *The American Public's Knowledge of the U.S. Constitution*. New York: The Hearst Corporation, 1987. ED 289 812.

Kramnick, Isaac. *The Great National Discussion: The Discourse of Politics in 1787*. Paper presented at a conference of the U.S. Capitol Historical Society and the United States Congress. Washington, DC, March 27, 1987. ED 296 912.

Lennon, Donald R. *From Confederation to Constitution*. Paper presented at the Annual Symposium on History and the Social Studies, East Carolina University, Greenville, NC, September, 26, 1986. ED 275 609.

Murphy, Paul L. *The Constitution in the Twentieth Century: Implications for Citizenship Education*. Paper presented at the Symposium on the Constitution and Northwest Ordinance in the Education of Citizens. Ball State University, Muncie, IN, March 13, 1986. ED 268 041.

National Assessment of Educational Progress. *Civics, United States Government and Political Objectives, 1988 Assessment*. Princeton, NJ: Educational Testing Service, 1987. ED 287 875.

National Assessment of Educational Progress. *The Civics Report Card*. Princeton, NJ: Educational Testing Service, 1990. ED 315 376.

National Assessment of Educational Progress. *The History Report Card*. Princeton, NJ: Educational Testing Service, 1990. ED 315 377.

O'Connor, Mary Alice, and Mary L. Henze. *The Jefferson Meeting on the Constitution: The Constitution in the Classroom*. Washington, DC: The Jefferson Foundation, 1984. ED 271 379.

Quigley, Charles N., et al. *We the People*. Calabasas, CA: Center for Civic Education, 1987. ED 292 692.

Patrick, John J., and Richard C. Remy. *Lessons on the Constitution*. Washington, DC: Project '87 of the American Historical Association and American Political Science Association, 1985. ED 258 891.

Patrick, John J. *Teacher's Guide to the U.S. Constitution*. Bloomington, IN: Agency for Instructional Technology, 1987. ED 286 820.

Patrick, John J., and Clair W. Keller. *Lessons on The Federalist Papers*. Bloomington, IN: Organization of American Historians and ERIC/ChESS, 1988. ED 280 764.

Patrick, John J. *Teaching The Federalist Papers*. ERIC Digest EDO-SO-89-2. Bloomington, IN: ERIC/ ChESS, 1989. ED 292 740.

Patrick, John J. *The Federalist in the Curriculum*. Paper presented at the Program for Teachers on James Madison and *The Federalist Papers* at Montpelier, VA, June 29, 1989. ED 313 276.

Patrick, John J. *Liberty and Order in Constitutional Government: Ideas and Issues in The Federalist Papers*. Richmond, VA: The Virginia Jefferson Association, 1989. ED 313 315.

Ragan, Fred D. *Willie Jones: The Alternate View of a North Carolina Antifederalist*. Paper presented at the Annual Symposium on History and the Social Studies, East Carolina University, Greenville, NC, September 26, 1986. ED 276 661.

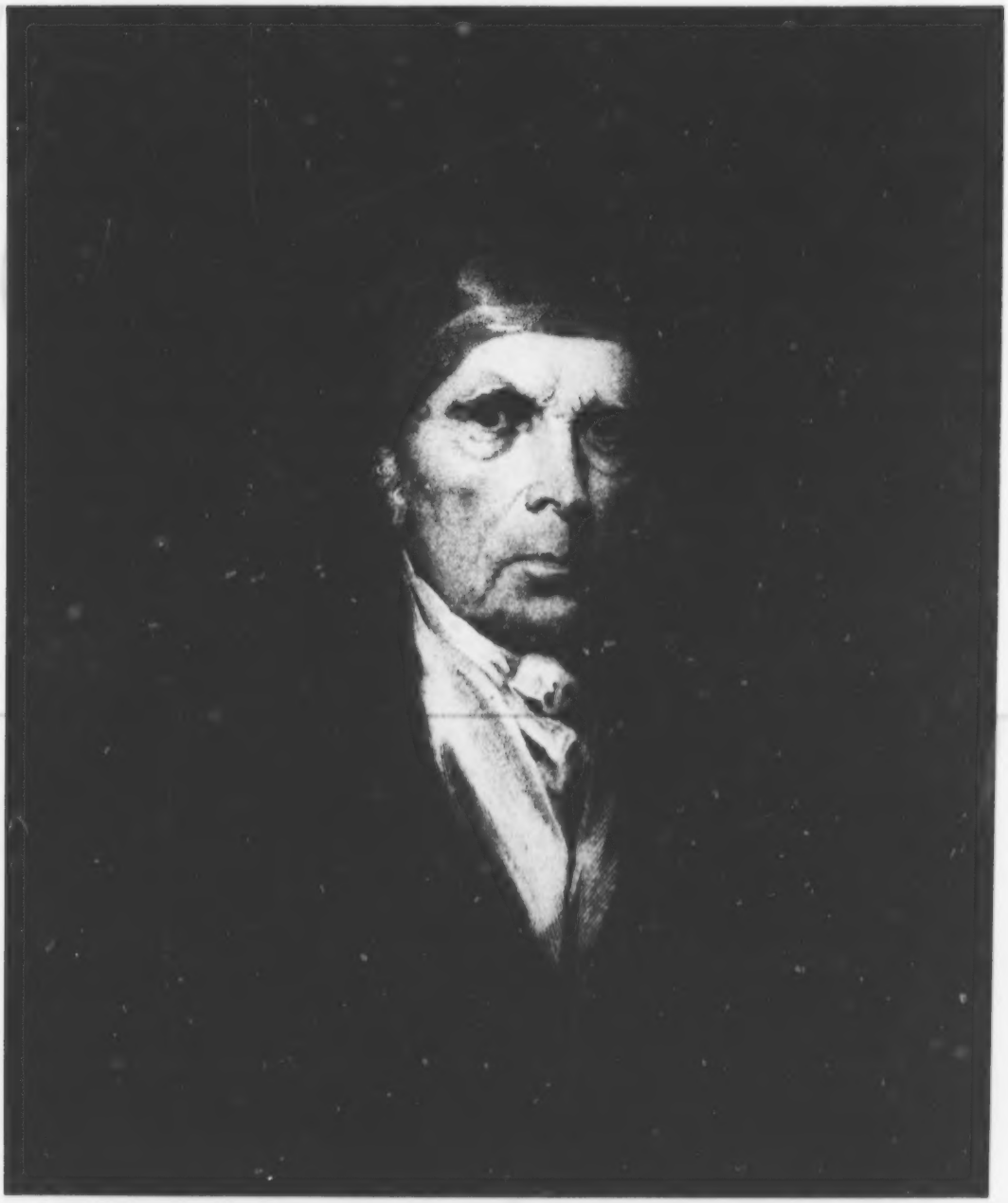
Rutland, Robert A. *The American Solution: Origins of the United States Constitution*. Washington, DC: Library of Congress, 1987. ED 298 017.

Scanlon, Thomas M. *James Madison and the Constitutional Convention*. Indianapolis, IN: Indiana State Bar Association. ED 304 371.

Schecter, Stephen L. ed., *Teaching about American Federal Democracy*. Philadelphia: Center for the Study of Federalism at Temple University, 1984. ED 248 161.

Smith, Melinda. *Law in U.S. History: A Teacher Resource Manual*. Boulder, CO: Social Science Education Consortium, 1983. ED 205 969.

Yarbrough, Jean. *"The Federalist." this Constitution: A Bicentennial Chronicle* 16 (Fall 1987): 4-9. ED 300 290.



James Madison, near the end of his life.

Source: Library of Congress

Tombstone of James Madison at Montpelier. Madison died at home on June 28, 1836. He was 85 years old.

Source: Library of Congress

"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

JAMES MADISON
The Federalist No. 47

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